

A
A
0
0
0
8
3
6
0
2
8
1

7, FLEET STREET,
LONDON, 1879.

WORKS PUBLISHED BY MESSRS. BUTTERWORTH,

Law Publishers to the Queen's most Excellent Majesty.

Denison and Scott's House of Lords Appeal Practice.	16s. cl.
Und	3s. cloth.
Und	3s. cloth.
Mic'	oly. 2nd
Oke'	Post 8vo.
Oke'	Post 8vo.
Oke'	60s. cl.
Oke'	3s. cloth.
Oke'	1s. cloth.
Fish	don Pro-
Locc	l on Ap-
Han	o. 8s. 6d.
Dav	876. It
Dav	s's County
Dav	Edition.
Drey	hancery
Moz	ol. 8vo.
Folk	yal 8vo.
Coot	Justice
Chac	26s. cloth.
Bund	Roy. 8vo.
Pow	vidence.
Thoi	l Official
Higg	Letters
Adam	
Crup	verage.
Colli	of Joint
Stock Companies	Post 8vo. 3s. cloth.
De Colyar's Law of Guarantees and Principal and Surety.	8vo. 14s. cloth.
Grant's Law of Bankers and Banking.	3rd Edition, by
R. A. Fisher, corrected to 1876.	8vo. 28s. cloth.



UNIVERSITY OF CALIFORNIA LOS ANGELES

SCHOOL OF LAW LIBRARY

* For complete Catalogue, see end of this Book.

Adam Johnston
Toronto Nov. 1879

- Sir T. Erskine May's Parliamentary Practice. 8th Edition.
 8vo. 2l. 2s. cloth.
- Bund's Law of Salmon Fisheries, 1873. Post 8vo. 16s. cloth.
- Kelly's Conveyancing Draftsman. Post 8vo. 6s. cloth.
- Redman's Law of Arbitrations and Awards. 8vo. 12s. cloth.
- Hunt's Law of Frauds and Bills of Sale. Post 8vo. 9s. cloth.
- Seaborne's Law of Vendors and Purchasers of Real Property. 2nd Edition. Post 8vo. cloth. *In the Press.*
- Fawcett's Law of Landlord and Tenant. 8vo. 14s. cloth.
- Saunders's Law applicable to Negligence. Post 8vo. 9s. cl.
- Shelford's Law and Practice of Joint Stock Companies.
 2nd Edition. By D. PITCHER and F. L. LATHAM. 8vo. 21s. cloth.
- Shelford's Law of Railways. 4th edit. By W. C. Glen, Esq.
 In 2 vols. Royal 8vo. 63s. cloth.
- Clark's Digest of House of Lords Cases from 1814 to the
 present Time. Royal 8vo. 31s. 6d. cloth.
- Ingram's Law of Compensation for Lands and Houses.
 2nd Edition. By ELMES. Post 8vo. 12s. cloth.
- Coombs' Solicitors' Bookkeeping. 8vo. 10s. 6d. cloth.
- Coote's Admiralty Practice. 2nd Edition, with Forms and
 Tables of Costs. 8vo. 16s. cloth.
- Bainbridge's Mines and Minerals. 4th Edition. 45s. cloth.
- Scriven's Law of Copyholds. 5th Edition, by Stalman.
 Abridged in 1 vol. Royal 8vo. 39s. cloth.
- Trower's Church, Parsonage and Schools Building Laws,
 continued to 1871. Post 8vo. 9s. cloth.
- Rouse's Practical Conveyancer. 3rd ed. 2 vols. 8vo. 30s. cl.
- Sir R. Phillimore's International Law. 4 vols. 8vo. £6:3s.
 cloth.
- Latham's Law of Window Lights. Post 8vo. 10s. cloth.
- Hunt's Law of Boundaries and Fences and Rights of Waters.
 2nd Edition. 12s. cloth.
- Rouse's Copyhold Emfranchisement Manual. 3rd Edition.
 12mo. 10s. 6d. cloth.
- Dixon's Law of Partnership. 8vo. 22s. cloth.
- Barry's Practice of Conveyancing. 8vo. 18s. cloth.
- Woolrych on the Law of Sewers, with the Drainage Acts.
 3rd Edition. 8vo. 12s. cloth.
- Tudor's Leading Cases on Real Property, Conveyancing,
 Wills and Deeds. 3rd Edition. Royal 8vo. cloth. *In the Press.*
- Tudor's Charitable Trusts. 2nd edit. Post 8vo. 18s. cloth.
- Phillips's Law of Lunatics, Idiots, &c. Post 8vo. 18s. cloth.
- Powell's Law of Inland Carriers. 2nd edit. 8vo. 14s. cloth.
- Shelford's Succession, Probate and Legacy Duties. 2nd ed.
 12mo. 16s. cloth.
- Christie's Crabb's Conveyancing. 5th Edition, by Shelford.
 2 vols. Royal 8vo. 3l. boards.
- Wigram's Extrinsic Evidence in the Interpretation of Wills.
 4th Edition. 8vo. 11s. cloth.
- Grant's Law of Corporations in General, as well Aggregate
 as Sole. Royal 8vo. 26s. boards.

A SUMMARY
OF THE
LAW OF TORTS;
OR,
WRONGS INDEPENDENT OF CONTRACT.

Second Edition,

BY

ARTHUR UNDERHILL, M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW;

ASSISTED BY

CLAUDE C. M. PLUMPTRE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

(Middle Temple Common Law Scholar, Hilary Term, 1877.)

LONDON:

BUTTERWORTHS, 7, FLEET STREET,

Law Publishers to the Queen's most excellent Majesty.

DUBLIN: HODGES, FOSTER & CO.

EDINBURGH: T. & T. CLARK; BELL & BRADFUTE.

CALCUTTA: THACKER, SPINK & CO. BOMBAY: THACKER, VINING & CO.

MELBOURNE: GEORGE ROBERTSON.

1878.

LONDON :

PRINTED BY C. F. ROWORTH, BREEM'S BUILDINGS, CHANCERY LANE.

PREFACE

TO THE SECOND EDITION.



THE fact that a thousand copies, constituting the First Edition, of this Work have been sold in less than five years, renders it no longer necessary to justify its existence.

In this Edition the First Chapter has been completely re-written, and new Chapters upon Injunctions, Negligence, and Fraud have been added. Nearly sixty pages of new matter have been interpolated by these means, and by additions to previously existing chapters, and the whole has been carefully corrected and revised.

Many of my friends and clients have expressed surprise that an Equity and Conveyancing Counsel should have written a treatise on the Law of Torts. The answer is, that every lawyer, whatever his speciality may be, ought to know the *principles* of every branch of the law; and, in my student days, my endeavours to fathom the principles of the Law of Torts were surrounded with so much unnecessary difficulty, owing to the absence of any text book

separating *principle* from *illustration*, that I became convinced that a new crop of students would welcome even such a guide as I was capable of furnishing. The result has proved that I was not mistaken.

It only remains to render most grateful thanks to my friend and former pupil, Mr. Claude C. M. Plumptre, of the Common Law Bar, who has kindly taken upon himself the sole burden of revising (and in some measure rewriting) the whole of that portion of the Work which relates to particular Torts, with the exception of the Chapters on Nuisances, Trespasses, and Infringements of Trade Marks, Patent-right, and Copyright. By his labours mine have been greatly diminished, and the utility of the Work materially increased.

ARTHUR UNDERHILL.

23, SOUTHAMPTON BUILDINGS, CHANCERY LANE.

July 19th, 1878.

CONTENTS.



	PAGE
PREFACE	iii
TABLE OF CASES CITED.	ix

PART I. OF TORTS IN GENERAL.



CHAPTER I.

OF WRONGS PURELY EX DELICTO	3
---------------------------------------	---



CHAPTER II.

OF QUASI TORTS	24
--------------------------	----



CHAPTER III.

OF THE LIABILITY OF A MASTER FOR HIS SERVANTS' TORTS	29
---	----

PT. I. OF TORTS IN GENERAL—*continued*.

CHAPTER IV.

	PAGE
OF THE LIMITATION OF ACTIONS EX DELICTO . . .	51

CHAPTER V.

OF THE MEASURE OF DAMAGES IN ACTIONS OF TORT . . .	55
--	----

CHAPTER VI.

OF INJUNCTIONS TO RESTRAIN THE CONTINUANCE OF TORTS	71
--	----

PART II.

OF RULES RELATING TO PARTICULAR TORTS.

CHAPTER I.

OF DEFAMATION	83
-------------------------	----

CHAPTER II.

OF MALICIOUS PROSECUTION	99
------------------------------------	----

PT. II. OF RULES RELATING TO PARTICULAR TORTS—*contd.*

CHAPTER III.

	PAGE
OF FALSE IMPRISONMENT AND MALICIOUS ARREST	105

— — —

CHAPTER IV.

OF ASSAULT AND BATTERY	118
----------------------------------	-----

— — —

CHAPTER V.

OF BODILY INJURIES CAUSED BY NUISANCES	125
--	-----

— — —

CHAPTER VI.

OF NEGLIGENCE	135
-------------------------	-----

— — —

CHAPTER VII.

OF ADULTERY AND SEDUCTION	149
-------------------------------------	-----

— — —

CHAPTER VIII.

OF TRESPASS TO LAND AND DISPOSSESSION	159
---	-----

— — —

CHAPTER IX.

OF PRIVATE NUISANCES AFFECTING REALTY	173
---	-----

PT. II. OF RULES RELATING TO PARTICULAR TORTS—*contd.*

CHAPTER X.

	PAGE
OF FRAUD AND DECEIT	201

CHAPTER XI.

OF TRESPASS TO AND CONVERSION OF CHATTELS	209
---	-----

CHAPTER XII.

OF INFRINGEMENTS OF TRADE MARKS AND PATENT AND COPYRIGHT	222
---	-----

TABLE OF CASES CITED.

A.

PAGE

Abbot <i>v.</i> McFie	110
Acton <i>v.</i> Blundell	192
Aldred <i>v.</i> Constable	210
Allen <i>v.</i> Howard	38
— <i>v.</i> New Gas Company	43
Allsopp <i>v.</i> Allsopp	90
Alton <i>v.</i> Midland Railway Company	25
American Cloth Company <i>v.</i> American Leather Cloth Company	223
Ancaster <i>v.</i> Milling	61
Anderson <i>v.</i> Radcliffe	164
Angus <i>v.</i> Dalton	186
Arcedeckne <i>v.</i> Kelk	188
Armory <i>v.</i> Delamirie	69, 214
Ashby <i>v.</i> White	5, 8
Asher <i>v.</i> Whitlock	161, 167, 168
Ashwix <i>v.</i> Stanwix	47
Atkinson <i>v.</i> Gateshead Water Company	20
Attorney-General <i>v.</i> Mayor, &c. of Birmingham	77
Aynsley <i>v.</i> Glover	73, 187, 188

B.

Back <i>v.</i> Stacy	186
Backhouse <i>v.</i> Bonomi	49—53, 181
Bailey <i>v.</i> Manchester, Sheffield and Lincoln Railway Co.	29, 35
— <i>v.</i> Walford	203
Baldwin <i>v.</i> Casella	142
Balme <i>v.</i> Hutton	213
Bamford <i>v.</i> Turnley	177
Barely <i>v.</i> Mathews and Wife	102
Barnes <i>v.</i> Ward	125, 131
Barry <i>v.</i> Croskey	26
Bartonshill Coal Company <i>v.</i> Reid	30, 44
Barwick <i>v.</i> English Joint Stock Bank	204
Baseley <i>v.</i> Clarkson	14

	PAGE
Battishill <i>v.</i> Reid	177
Baxter <i>v.</i> Taylor	200
Bayliss <i>v.</i> Fisher	67
——— <i>v.</i> Lawrence	87
Beard <i>v.</i> Egerton	231
Beaver <i>v.</i> Mayor, &c. of Manchester	162
Beckford <i>v.</i> Hood	20
Beckwith <i>v.</i> Philby	106
——— <i>v.</i> Shoredike	11
Beddingfield <i>v.</i> Onslow	200
Bedford <i>v.</i> M'Kowl	56, 157
Bell <i>v.</i> Stone	84
——— <i>v.</i> Walker	240
Benjamin <i>v.</i> Storr	9
Bennett <i>v.</i> Alcott	154
Binks <i>v.</i> S. Y. and R. D. R. Co.	127
Bird <i>v.</i> Jones	105
——— <i>v.</i> Randall	153
Bishop of London's case	211
Bishop <i>v.</i> Trustees of Bedford Charity	125
Blake <i>v.</i> Lanyon	152
Bloodworth <i>v.</i> Gray	91
Blyth <i>v.</i> Topham	131
Blythe <i>v.</i> Birmingham Water Company	136
Bogue <i>v.</i> Houlston	236
Bolingbroke <i>v.</i> Swindon Local Board	42
Bolch <i>v.</i> Smith	132
Bonomi <i>v.</i> Backhouse	181
Booth <i>v.</i> Mister	41
Boulton <i>v.</i> Watt	234
Bower <i>v.</i> Cook	166
Boyle <i>v.</i> Tamlin	159
Bradley <i>v.</i> Copley	213
Bradshaw <i>v.</i> Lancashire and Yorkshire Railway Company	146
Braham <i>v.</i> Bustard	226
Brandley <i>v.</i> Chesterton	63
Brassington <i>v.</i> Lewellyn	169
Brewer <i>v.</i> Dew	67
——— <i>v.</i> Sparrow	220
Britton <i>v.</i> South Western Railway Company	57
Broad <i>v.</i> Ham	102
Brook <i>v.</i> Ashton	231
——— <i>v.</i> Copeland	143
Brown <i>v.</i> Boorman	24
——— <i>v.</i> Dawson	164
——— <i>v.</i> Robins	184, 185
Bullen <i>v.</i> Langdon	198
Burgess <i>v.</i> Burgess	227
——— <i>v.</i> Gray	38
——— <i>v.</i> Great Western Railway Company	134

	PAGE
Burroughs <i>v.</i> Bayne	209
Bury <i>v.</i> Bedford	227
Butcher <i>v.</i> Butcher	164
Butt <i>v.</i> Imperial Gas Company	7
Byrne <i>v.</i> Boodle	146

C.

Calcraft <i>v.</i> Harborough	151
Caldar <i>v.</i> Halkett	112
Campbell <i>v.</i> Scott	240
Can <i>v.</i> Lambert	197
Canham <i>v.</i> Fisk	189
Carlyon <i>v.</i> Lavering	192
Carpenter <i>v.</i> Smith	232
Carr <i>v.</i> Clark	151
— <i>v.</i> Hood	97
Carslake <i>v.</i> Mapledrum	91
Cary <i>v.</i> Kearsley	238
Cave <i>v.</i> Mountain	111
Chandler <i>v.</i> Robinson	185
Chapman <i>v.</i> Pickersgrill	9
Chasemore <i>v.</i> Richards	191, 192
Chester <i>v.</i> Holyhead Railway Company	132
Chinery <i>v.</i> Viall	69
Christie <i>v.</i> Cowell	91
Christopherson <i>v.</i> Bare	119, 120
Churchill <i>v.</i> Siggers	99
Cibber <i>v.</i> Sloper	152
City Commissioners of Sewers <i>v.</i> Glass	198
Clark <i>v.</i> Freeman	75, 85
Clarke <i>v.</i> Clark	78, 150
Clay <i>v.</i> Roberts	85
Clements <i>v.</i> Chivis	85
Cliff <i>v.</i> Midland Railway Company	139
Cobbett <i>v.</i> Gray	119
Cockroft <i>v.</i> Smith	121
Cocks <i>v.</i> Chandler	226
Coggs <i>v.</i> Bernard	27
Collins <i>v.</i> Evans	202
— <i>v.</i> Midland Level Commissioners	62
Compton <i>v.</i> Richards	189
Cook <i>v.</i> Wildes	96
Cooper <i>v.</i> Beale	121
— <i>v.</i> Booth	104
— <i>v.</i> Hubbock	188
— <i>v.</i> Marshall	199
— <i>v.</i> Willomat	210, 213

	PAGE
Couch v. Steel	19, 20
Coutts v. Gorham .. .. .	.. 189
Covell v. Laming .. .. .	.. 120
Coward v. Baddeley .. .. .	.. 120
Cowles v. Potts .. .. .	.. 97
Cox v. Burbidge .. .. .	.. 141
— v. Glue .. .. .	.. 164
— v. Lee .. .. .	.. 85
— v. Mousley .. .. .	.. 164
Coxhead v. Richards .. .. .	.. 97
Crane v. Price	230, 231
Crespigny v. Wellesley .. .. .	.. 94
Cresswell v. Hedges .. .. .	.. 165
Croft v. Alison .. .. .	.. 31
Crossley v. Lightowler	191, 192
Crump v. Lambert .. .. .	.. 195
Cubitt v. Porter .. .. .	.. 166
Curriers' Company v. Corbet .. .. .	.. 74
Cuthbertson v. Parson .. .. .	.. 42

D.

D'Almaine v. Boosey .. .. .	.. 238
Dalton v. South Eastern Railway Company	60, 146
Dand v. Sexton .. .. .	.. 209
Dangerfield v. Jones .. .. .	.. 231
Daniel v. Metropolitan Railway Company .. .. .	.. 136
Dansey v. Richardson .. .. .	.. 162
Davis v. Eley .. .. .	.. 113
— v. London and North Western Railway Company .. .. .	.. 64
— v. Marshall .. .. .	.. 189
— v. Russell .. .. .	.. 107
— v. Shead .. .. .	.. 95
— v. Solomon .. .. .	.. 90
— v. Williams	155, 199
Dawkins v. Lord Paulet	95, 109
— v. Lord Rokesby .. .. .	.. 96
Dean v. Peel .. .. .	.. 154
Degg v. M. R. Co. .. .. .	.. 50
Delaney v. Fox .. .. .	.. 168
Dent v. Auction Mart Company	72, 186
Dere v. Guest .. .. .	.. 78
Derry v. Handley .. .. .	.. 93
Dickenson v. Grand Junction Canal Company .. .. .	.. 191
— v. North Eastern Railway Company .. .. .	.. 145
Dickson v. Hilliard .. .. .	.. 95
Digby v. Thompson .. .. .	.. 84
Dixon v. Bell	59, 135
Dobell v. Stevens .. .. .	.. 202

	PAGE:
Dobson <i>v.</i> Blackmore	200
Dockwray <i>v.</i> Dickenson	68
Doe <i>d.</i> Carter <i>v.</i> Bernard	168
— <i>d.</i> Johnston <i>v.</i> Baytup	168
— <i>d.</i> Knight <i>v.</i> Merryweather	168
— <i>d.</i> North <i>v.</i> Webber	169
— <i>d.</i> Oliver <i>v.</i> Powell	168
Donaldson <i>v.</i> Beckett	235
Doswall <i>v.</i> Inukey	109
Dunn <i>v.</i> Birmingham Canal Company	184
Durrell <i>v.</i> Pritchard	78
Dyner <i>v.</i> Leach	48

E.

Eager <i>v.</i> Grimwood	158
Eardley <i>v.</i> Earl Granville	160
Eaton <i>v.</i> Johns	85
Edgebury <i>v.</i> Stephens	231
Edwards <i>v.</i> Clay	53
— <i>v.</i> Crock	151
Elliott <i>v.</i> Kemp	214
— <i>v.</i> North Eastern Railway Company	77
Elliottson <i>v.</i> Fieldham	180
Ellis <i>v.</i> Loftus Iron Company	210
— <i>v.</i> Sheffield Gas Company	39
— <i>v.</i> Great Western Railway Company	139
Elsam <i>v.</i> Fawcett	151
Embrey <i>v.</i> Owen	191
Evans <i>v.</i> Edmonds	202
— <i>v.</i> Evans	150
— <i>v.</i> Walton	153
Every <i>v.</i> Smith	165

F.

Faldo <i>v.</i> Ridge	161
Falvey <i>v.</i> Stanford	57
Farley <i>v.</i> Danks	99
Feltham <i>v.</i> England	45
Fenn <i>v.</i> Bittleston	213
Fenwick <i>v.</i> East London Railway Company	72
Fetter <i>v.</i> Beale	64
Fitzjohn <i>v.</i> MacKinder	100, 101
Fletcher <i>v.</i> Rylands	160
Flight <i>v.</i> Thomas	180
Fordham <i>v.</i> L., B. & S. C. R. Co.	138

	PAGE
Foster <i>v.</i> Foster	151
Fouldes <i>v.</i> Willoughby	209
Foulger <i>v.</i> Newcombe	91
Fox <i>v.</i> Broderick	86
France <i>v.</i> Gaudet	58
Francis <i>v.</i> Cockerell	42
Franklin <i>v.</i> South Eastern Railway Company ..	60, 145, 146
Frewen <i>v.</i> Phillips	189
Fryer <i>v.</i> Kinnersley	97

G.

Galway <i>v.</i> Marshall	92
Gardiner <i>v.</i> Slade	97
Gatherecole <i>v.</i> Miall	98
Gayford <i>v.</i> Moffat	194
Gee <i>v.</i> Pritchard	75
General Omnibus Company <i>v.</i> Limpus	31
George and Richard, The	19
Gibbs <i>v.</i> Cole	233
Gilpin <i>v.</i> Fowler	97
Gladman <i>v.</i> Johnston	143
Glave <i>v.</i> Harding	189
Glover <i>v.</i> South Western Railway Company ..	60
Goff <i>v.</i> Great Northern Railway Company ..	35
Goldsmid <i>v.</i> Tunbridge Wells Company ..	75, 77
Goodtitle <i>v.</i> Alder	164
Gordon <i>v.</i> Cheltenham Railway Company ..	79
Gorris <i>v.</i> Scott	21
Gott <i>v.</i> Gandy	129
Gourley <i>v.</i> Plimsoll	84
Grainger <i>v.</i> Hill	105
Gray <i>v.</i> Gray	84
Great Western Railway Company <i>v.</i> Bennett ..	184
— <i>v.</i> Fawcett	132
Greatrex <i>v.</i> Hayward	194
Green <i>v.</i> Britton	88
Greenslade <i>v.</i> Halliday	200
Greensland <i>v.</i> Chaplin	140
Gregory <i>v.</i> Piper	42, 159
— <i>v.</i> Williams	61
Greville <i>v.</i> Chapman	85
Griffin <i>v.</i> Coleman	106, 107, 122
Griffiths <i>v.</i> Gidlow	49
— <i>v.</i> Tootjen	155
Gwinnell <i>v.</i> Eamer	130

II.

	PAGE
Haddesdon <i>v.</i> Gryssel	210
Hadley <i>v.</i> Baxendale	70
——— <i>v.</i> Taylor	8
Hall <i>v.</i> Johnson	43
Hambleton <i>v.</i> Vere	57
Hamer <i>v.</i> Knowles	184
Hammack <i>v.</i> White	146
Hammond <i>v.</i> St. Pancras Vestry	11
Hankinson <i>v.</i> Billy	85
Hannam <i>v.</i> Mockett	161
Harcastle <i>v.</i> S. W. and Y. D. Railway Company	127
Harding <i>v.</i> King	124
Hardy <i>v.</i> Ryle	51
Harris <i>v.</i> Butler	154
Harrison <i>v.</i> Bush	86, 95
——— <i>v.</i> Taylor	224, 226
Hart <i>v.</i> Humpack	95
Harwood <i>v.</i> Great Northern Railway Company	230
Hedges <i>v.</i> Tagg	155
Henderson <i>v.</i> Broomhead	96, 109
——— <i>v.</i> Harrison	95
Hesley <i>v.</i> Chapman	100
Heydon and Smith's case	68
Hide <i>v.</i> Thornborough	186
Higgins <i>v.</i> Andrews	217
Hilberry <i>v.</i> Hatton	211
Hill <i>v.</i> Evans	230
Hinton <i>v.</i> Heather	100
Hiscox <i>v.</i> Greenwood	212
Hodgson <i>v.</i> Scarlett	96
Hogg <i>v.</i> Ward	107
Hole <i>v.</i> Barlow	179
Holker <i>v.</i> Porrit	193
Holmes <i>v.</i> Goring	195
——— <i>v.</i> Mather	136
——— <i>v.</i> Worthington	49
Holt <i>v.</i> Scholefield	91
Hooper <i>v.</i> Griscott	87
Hopper <i>v.</i> Reeve	120
Houlden <i>v.</i> Smith	111
Hounsel <i>v.</i> Smith	127
Huckle <i>v.</i> Money	55
Hughes <i>v.</i> McPie	140
Hull <i>v.</i> Pickersgill	36
Humphreys <i>v.</i> Brogden	175, 180, 181
Huntley <i>v.</i> Simpson	100
Hurdman <i>v.</i> North Eastern Railway Company	14

I.						PAGE
Ianson <i>v.</i> Stewart .. .. .	..	..	..	..	..	84
Inchbald <i>v.</i> Robinson .. .. .	..	..	..	..	..	176
———— <i>v.</i> Barrington .. .. .	..	..	..	..	..	176
Indermaur <i>v.</i> Dames .. .. .	..	..	..	..	..	16, 133
Irwin <i>v.</i> Brandwood .. .. .	..	..	..	..	..	91
Iveson <i>v.</i> Moore .. .. .	..	..	..	..	..	5

J.						
Jacobs <i>v.</i> Senard .. .. .	..	..	..	..	..	165, 216
Jamond <i>v.</i> Knight .. .. .	..	..	..	..	..	189
Job <i>v.</i> Potton .. .. .	..	..	..	..	..	165
Joel <i>v.</i> Morrison .. .. .	..	..	..	..	..	41
John <i>v.</i> Bacon .. .. .	..	..	..	..	..	136
Johnson <i>v.</i> Emerson .. .. .	..	..	..	..	..	99
———— <i>v.</i> Stear .. .. .	..	..	..	..	..	69
Johnstone <i>v.</i> Sutton .. .. .	..	..	..	..	..	99, 101
Jones <i>v.</i> Boyce .. .. .	..	..	..	..	..	58
———— <i>v.</i> Chapman .. .. .	..	..	..	..	..	163
———— <i>v.</i> Herne .. .. .	..	..	..	..	..	90
———— <i>v.</i> Stevens .. .. .	..	..	..	..	..	65
Jupe <i>v.</i> Pratt .. .. .	..	..	..	..	..	234

K.						
Keats <i>v.</i> Cadogan .. .. .	..	..	..	..	..	129
Keene <i>v.</i> Reynolds .. .. .	..	..	..	..	..	161
Kelly <i>v.</i> Sherlock .. .. .	..	..	..	..	..	56, 65
———— <i>v.</i> Tinling .. .. .	..	..	..	..	..	95, 98
Kemp <i>v.</i> Neville .. .. .	..	..	..	..	..	109
Kendillon <i>v.</i> Maltby .. .. .	..	..	..	..	..	192
Kidgell <i>v.</i> Moore .. .. .	..	..	..	..	..	200
King <i>v.</i> Rose .. .. .	..	..	..	..	..	211
Kirk <i>v.</i> Gregory .. .. .	..	..	..	..	..	210
Knight <i>v.</i> Gex .. .. .	..	..	..	..	..	38
Knott <i>v.</i> Morgan .. .. .	..	..	..	..	..	227

L.						
Lacy <i>v.</i> Rhys .. .. .	..	..	..	..	..	241
Lafond <i>v.</i> Ruddock .. .. .	..	..	..	..	..	54
Lamine <i>v.</i> Dorrell .. .. .	..	..	..	..	..	220
Lancashire Waggon Company <i>v.</i> Fitzlugh .. .. .	..	..	..	..	..	215
Lancaster Canal Company <i>v.</i> Parnaby .. .. .	..	..	..	..	..	131, 132
Langridge <i>v.</i> Levy .. .. .	..	..	..	..	..	26, 201, 202
Latham <i>v.</i> Latham and Gethin .. .. .	..	..	..	..	..	150

	PAGE
<i>Laugher v. Pointer</i>	37
<i>Laughton v. Bishop of Sodor</i>	95
<i>Lawless v. Anglo-Egyptian Cotton Company</i>	95
<i>Lawrence v. Obce</i>	159
<i>Lay v. M. Railway Company</i>	141
<i>Leake v. Loveday</i>	214
<i>Leary v. Patrick</i>	114
<i>Leather Cloth Company v. American Leather Cloth Company</i>	227
<i>Lee v. Riley</i>	159
<i>Legg v. Tucker</i>	281
<i>Lewis v. Levy</i>	96
—— <i>v. Marling</i>	231
<i>Ley v. Peter</i>	170
<i>Limpus v. General Omnibus Company</i>	31
<i>Longmeid v. Holiday</i>	26
<i>Lovell v. Howell</i>	44
<i>Low v. Wood</i>	236
<i>Lumley v. Gay</i>	87, 88, 152
<i>Lynch v. Knight</i>	87
—— <i>v. Nurdin</i>	140
<i>Lyons v. Martin</i>	12

M.

<i>Mackay v. Commercial Bank of New Brunswick</i>	205
<i>Mackey v. Ford</i>	96
<i>Macpherson v. Daniels</i>	84, 92
<i>Magor v. Chadwick</i>	191
<i>Manby v. Witt</i>	97
<i>Mangan v. Atterton</i>	141
<i>Manley v. Field</i>	154
<i>Marsh v. Keating</i>	220
—— <i>v. Loader</i>	106
<i>Marshall v. York, &c. Railway Company</i>	26
<i>Martin v. Great Northern Railway Company</i>	134
—— <i>v. Strachan</i>	167
<i>Martindale v. Smith</i>	214
<i>Mason v. Caesar</i>	199
—— <i>v. Williams</i>	205
<i>Masper and wife v. Brown</i>	124
<i>Maxwell v. Hogg</i>	237
<i>May v. Burdett</i>	141
<i>Mayall v. Higby</i>	240
<i>Mayhew v. Herricks</i>	216
<i>M'Andrew v. Bassett</i>	226
<i>M'Gregor v. Thwaites</i>	94, 96
<i>M'Leod v. Whateley</i>	97
<i>M'Manus v. Cricket</i>	42
<i>Mears v. London and South Western Railway Company</i> ..	215

	PAGE
Mellors <i>v.</i> Shaw	47
Merest <i>v.</i> Harvey	67
Metropolitan Assurance Company <i>v.</i> Petch	200
————— Saloon Omnibus Company <i>v.</i> Hawkins	85
————— Railway Company <i>v.</i> Jackson	147
Miller <i>v.</i> Hope and Shaw	109
Milligan <i>v.</i> Wedge	38
Millington <i>v.</i> Fox	224
Mitchell <i>v.</i> Crasweller	31, 42
Moore <i>v.</i> Robinson	213
Morgan <i>v.</i> Lingen	85
————— <i>v.</i> Vale of Neath Company	43, 44
————— <i>v.</i> Hughes	111
Morris <i>v.</i> Morris	151
Mortimer <i>v.</i> Craddock	69
Mullett <i>v.</i> Mason	62
Mumford <i>v.</i> O., W. and W. Rail. Co.	200
Murchie <i>v.</i> Black	180
Murray <i>v.</i> Currie	42
————— <i>v.</i> Hall	165

N.

Nelson <i>v.</i> The Liverpool Brewery Company	130
Nichols <i>v.</i> Marsland	13, 160
Norris <i>v.</i> Baker	199
North-Eastern Railway Company <i>v.</i> Elliott	185
Northampton <i>v.</i> Ward	164
Notley <i>v.</i> Buck	220
Novello <i>v.</i> Sudlow	22
Nuttal <i>v.</i> Bracewell	193

O.

Olliott <i>v.</i> Bessey	112
Onslow and Whalley's case, Queen <i>v.</i> Castro	113
Ormond <i>v.</i> Holland	47
Osborn <i>v.</i> Gillet	146, 156
Oughton <i>v.</i> Seppings	220
Overton <i>v.</i> Freeman	42
Oxley <i>v.</i> Watts	216

P.

Page <i>v.</i> Edulgee	214
Pahner <i>v.</i> Paul	77
Paris <i>v.</i> Levy	98
Parkins <i>v.</i> Scott	92

	PAGE
Partridge <i>v.</i> Scott	185
Pasley <i>v.</i> Freeman	201
Patent Bottle Company <i>v.</i> Spencer	231
Patrick <i>v.</i> Colerick	161
Pattison <i>v.</i> Jones	97
Payne <i>v.</i> Rivan	100
Peake <i>v.</i> Oldham	91
Pearson <i>v.</i> Cox	37
— <i>v.</i> Spencer	195
Peck <i>v.</i> Gurney	206
Penn <i>v.</i> Jack	59, 233
Percival <i>v.</i> Phipps	76
Perryman <i>v.</i> Lister	101
Phillips <i>v.</i> Jansen	92
Pickering <i>v.</i> Dowson	207
Pillott <i>v.</i> Wilkinson	217
Pinnington <i>v.</i> Gallard	195
Pippin <i>v.</i> Sheppard	26
Pope <i>v.</i> Curl	76
Popplewell <i>v.</i> Hodgkinson	181
Potter <i>v.</i> Faulkner	50
Potts <i>v.</i> Smith	188
Poulton <i>v.</i> London and South Western Railway Company	33
Pretty <i>v.</i> Birkmore	129
Prince Albert <i>v.</i> Strange	240
Princess Royal, The	23
Procter <i>v.</i> Hodgson	194
Pryce <i>v.</i> Belcher	5
Pym <i>v.</i> Great Northern Railway Company	145, 146

Q.

Quarman <i>v.</i> Burnett	38
-----------------------------------	----

R.

R. <i>v.</i> Bardett	86
— <i>v.</i> Huggins	141
— <i>v.</i> Revel	113
— <i>v.</i> Rosswell	199
— <i>v.</i> Wheeler	229
Rapson <i>v.</i> Cubitt	37
Rawlings <i>v.</i> Tilt	119
Raynor <i>v.</i> Mitchell	31
Read <i>v.</i> Coker	119
— <i>v.</i> Edwards	212
— <i>v.</i> Great Eastern Railway Company	146

	PAGE
Reade <i>v.</i> Conquest	239
——— <i>v.</i> Lacy	239
Reddie <i>v.</i> Seolt	156
Reon <i>v.</i> Smith	109
Reyse <i>v.</i> Powell	164
Rhodes <i>v.</i> Smethurst	54
Rich <i>v.</i> Basterfield	130
Richards <i>v.</i> Rose	186
Richardson <i>v.</i> Mellish	63
——— <i>v.</i> Great Eastern Railway Company	136
——— <i>v.</i> Metropolitan Railway Company	138
——— <i>v.</i> North Eastern Railway Company	136
Rigby <i>v.</i> Hewitt	140
Rist <i>v.</i> Taux	154
Roberts <i>v.</i> Roberts	89
——— <i>v.</i> Rose	199
——— <i>v.</i> Smith	47
Robson <i>v.</i> Whittingham	186
Rosswell <i>v.</i> Pryor	130
Rourke <i>v.</i> White Moss Company	40
Rowbotham <i>v.</i> Wilson	180, 185
Rowcliffe <i>v.</i> Edwards	90
Russell <i>v.</i> Cowley	230
——— <i>v.</i> Horne	120
Rylands <i>v.</i> Fletcher	13
Ryan <i>v.</i> Clark	164

S.

Saloman <i>v.</i> Vintners' Company	186
Satherthwaite <i>v.</i> Dewhurst	154
Saunders <i>v.</i> Edwards	98
——— <i>v.</i> Merryweather	168
Savory <i>v.</i> Price	233
Sayre <i>v.</i> Moore	237
Scattergood <i>v.</i> Silvester	221
Schneider <i>v.</i> Heath	208
Scott <i>v.</i> Dock Company	11, 146
——— <i>v.</i> Shepherd	15, 16, 121
——— <i>v.</i> Stamford	238
——— <i>v.</i> Stansfield	96, 110
Searle <i>v.</i> Prentice	24
Senior <i>v.</i> Ward	48
Seymour <i>v.</i> Greenwood	35
Sharp <i>v.</i> Ifanckock	192
——— <i>v.</i> Powell	18
Sheaban <i>v.</i> Ahearn	84
Shepherd <i>v.</i> Midland Railway Company	18
Simmon <i>v.</i> Milligan	109

	PAGE
Simpson <i>v.</i> Holliday	233
— <i>v.</i> Savage	200
Simson <i>v.</i> London General Omnibus Company	137
Singer Machine Company <i>v.</i> Wilson	224, 225, 226
Singleton <i>v.</i> Eastern Counties Railway Company	140
Six Carpenters' case	163
Sketton <i>v.</i> London and North Western Railway Company	139
Slater <i>v.</i> Swann	211
Smith <i>v.</i> Fletcher	160
— <i>v.</i> Great Eastern Railway Company	137
— <i>v.</i> Hughes	206
— <i>v.</i> Lloyd	171
— <i>v.</i> Miller	213
— <i>v.</i> Smith	75
— <i>v.</i> Thackerah	181
Solton <i>v.</i> De Held	176
Somerville <i>v.</i> Hawkins	95
Southcote <i>v.</i> Stanley	133
Southee <i>v.</i> Denning	92
Southey <i>v.</i> Sherwood	236
Spark <i>v.</i> Heslop	59
Speill <i>v.</i> Maule	87, 95
Spiers <i>v.</i> Browne	238
Spokes <i>v.</i> Banbury Local Board	77
Spooner <i>v.</i> Brewster	210
St. Helens' Company <i>v.</i> Tippings	177, 178
Stapley <i>v.</i> London, Brighton and South Coast Railway Co.	139
Steadman <i>v.</i> Smith	166
Stevens <i>v.</i> Jeacocks	21
Stockdale <i>v.</i> Hansard	96
— <i>v.</i> Onwhyn	236
Storey <i>v.</i> Ashton	42
Straight <i>v.</i> Burn	188
Street <i>v.</i> Gugwell	177
Stróyan <i>v.</i> Knowles	184
Stubley <i>v.</i> London and North Western Railway Company	139
Styles <i>v.</i> Cardiff Steam Company	142
Sutliff <i>v.</i> Boothe	193
Sutton <i>v.</i> Moody	210
Swainson <i>v.</i> North Eastern Railway Company	46
Swanborough <i>v.</i> Coventry	189
Sweetland <i>v.</i> Webber	167
Swift <i>v.</i> Jewsbury	205
Sykes <i>v.</i> Sykes	227

T.

Tancred <i>v.</i> Allgood	214
Tappling <i>v.</i> Jones	188

	PAGE
Taylor <i>v.</i> Ashton	202
——— <i>v.</i> Hawkins	97
——— <i>v.</i> Whitehead	162
——— <i>v.</i> Williams	101
Terry <i>v.</i> Ashton	128
——— <i>v.</i> Hutchinson	155, 157
Thom <i>v.</i> Bigland	203
Thomas <i>v.</i> Powell	67
Thompson <i>v.</i> Barnard	91
——— <i>v.</i> Shackell	97
Thorpe <i>v.</i> Smallwood	214
Tichborn <i>v.</i> Mostyn	113
Timothy <i>v.</i> Simpson	107
Tindal <i>v.</i> Bell	63
Tinsley <i>v.</i> Lacy	239
Tippings <i>v.</i> St. Helens' Company	72, 175
Todd <i>v.</i> Flight	127, 136
Tollit <i>v.</i> Shenstone	25
Toomey <i>v.</i> London and Brighton Railway Company	146
Tuberville <i>v.</i> Savage	119
Tuff <i>v.</i> Worman	138, 139
Tullidge <i>v.</i> Wade	65, 124, 157
Tuuney <i>v.</i> M. Railway Company	44
Tumcliffe <i>v.</i> Teed	123
Turner <i>v.</i> Doe	171
——— <i>v.</i> Great Eastern Railway Company	46
——— <i>v.</i> Hunt	211

U.

Underhill <i>v.</i> Ellicombe	20
United Merthyr Company, Re	58

V.

Vaughan <i>v.</i> Menlove	135
——— <i>v.</i> Watt	217
Vaughton <i>v.</i> Bradshaw	123
Venables <i>v.</i> Smith	38
Verry <i>v.</i> Watkyns	158
Vicars <i>v.</i> Wilcox	88

W.

Wakeley <i>v.</i> Cooke	85
Wakeman <i>v.</i> Robinson	11

	PAGE
Walker v. Brewster	176
—— v. Brogden	84
Walter v. Selfe	176
Walton v. Waterhouse	168
Warburton v. Great Western Railway Company	46
Ward v. Eyre	211
—— v. Hobbs	206
—— v. Weeks	93
Warwick v. Foulkes	65
Wason v. Warlter	96
Watkins v. Hall	81, 87, 92
Watling v. Oastler	136
Weaver v. Ward	121
Webb v. Paternoster	190
Welch v. Knott	225
Welfare v. London, Brighton and South Coast Rail. Co.	42, 136
Wellock v. Constantine	23
Wells v. Abrahams	22
—— v. Head	212
West v. Smallwood	112
Weston v. Beeman	100
Whatman v. Pearson	42
Wheeler v. Whiting	122
White v. Bass	189
—— v. Hindley Local Board	9
—— v. France	133
—— v. Spettigue	23
Whitehouse v. Fellows	51
Whiteley v. Pepper	31
Wiggett v. Fox	42
Wild v. Pickford	213
Wilkinson v. Hagarth	165
Williams v. Clough	48
Williamson v. Freer	97
Wilson v. Barker	36
—— v. Merry	42
—— v. Newport Dock Company	58
—— v. Tunnian	36
Wingate v. Waite	111
Winter v. Brockwell	190
—— v. Henn	151
Winterbottom v. Lord Derby	7, 8
Withers v. North Kent Railway Company	132, 136
Wood v. Boosey	239
—— v. Ward	191
Woodman v. Baldock	211
Worth v. Gilling	112
Wren v. Weild	87
Wright v. Howard	191
—— v. Pearson	113

							PAGE
Wright <i>v.</i> Tallis	..	..	..	..	..	..	236
<u> </u> <i>v.</i> Woodgate	..	..	..	..	..	..	95
Wyatt <i>v.</i> White	..	..	..	..	..	..	103

Y.

Yates <i>v.</i> Jack	..	..	..	..	..	..	186
Young <i>v.</i> Spencer	..	..	..	..	..	..	200
<u> </u> <i>v.</i> Fernie	..	..	..	..	..	..	231

PART I.

RULES RELATING TO TORTS IN GENERAL.

CHAPTER I.

OF WRONGS PURELY EX DELICTO.

The Object of Law. “The maxims of law,” says Justinian, “are these: to live honestly, to hurt no man, and to give every one his due.” The practical object of jurisprudence must necessarily be to enforce the observance of these maxims, which is done by punishing the dishonest, causing wrongdoers to make reparation, and ensuring to every member of the community the full enjoyment of his rights and possessions.

Public and Private Wrongs. Infractions of law are, for the purposes of justice, divided into two great classes: viz., public and private wrongs. The former consist of such offences as, aiming at the root of society and order, are considered to be wrongs to the community at large; and as no redress can be given to the community, except by the prevention of such acts for the future, they are visited with some deterrent and exemplary punishment.

Private wrongs, or civil injuries, on the other hand, are such violations or deprivations of the legal rights of another, as are accompanied by either actual or presumptive damage. These being merely injuries

to private individuals, admit of redress. The law therefore affords a remedy, by forcing the wrongdoer to make reparation.

Division of Private Wrongs. But as wrongs are divided into criminal and civil, so the latter are subdivided into the two classes of wrongs *ex contractu*, and wrongs *ex delicto*; the former being such as arise out of the violation of private contracts; the latter, commonly called torts, such as spring from infractions of the great social obligation, by which each member of the state is bound to do hurt to no man.

It is of the latter class that I am about to treat in this work.

Definition of a Tort. A tort is described in the Common Law Procedure Act, 1852, as “a wrong independent of contract;” but, although this is no doubt a very correct and all-embracing definition for the purposes of judicially determining what is and what is not a tort, it does not, I think, convey any very clear idea of the nature of it. I shall not, however, attempt to define what a tort is, but shall content myself with the less scientific but more intelligible method of describing it as follows:—

RULE 1.—A person commits a tort, and renders himself liable to an action for damages, who commits some act not authorized by law, or who omits to do something which he ought to do by law, and by such act or

omission either infringes some absolute right, to the uninterrupted enjoyment of which another is entitled, *or* causes to such other some substantial loss of money, health, or material comfort, beyond that suffered by the rest of the public.

It will be perceived that two distinct factors go to make a tort, viz. (1) a wrongful act or omission (see *Pygce v. Belcher*, 4 C. B. 866) ; and (2) either a consequent invasion of another's right (see *Ashby v. White*, 1 Sm. L. C. 284), *or* the consequent infliction upon him of some loss (see *Ireson v. Moore*, 1 Ld. Raym. 486). Neither of these two factors will, by itself, be sufficient to sustain an action for damages, although, as we shall see hereafter, the first may, under certain circumstances, be alone sufficient to sustain an action for an injunction. An invasion of a right, or the infliction of damage, unconnected with a wrongful act, is technically called a *damnum absque injuriâ*, and it is a maxim that *ex damno absque injuriâ non oritur actio*. Instances of this are given below, from which it will be seen that the greatest losses may be occasioned, the greatest discomfort caused, nay, in some instances, the greatest unhappiness may be inflicted, provided that the doer is careful only to do such acts, or to make such omissions, as the law authorizes him to do or make.

On the other hand, although a *damnum absque injuriâ* is no ground for an action for damages, the converse by no means holds good ; for, as will be seen from the rule, the mere unlawful infringement

of a right is of itself a cause of action, without the infliction of any appreciable damage whatever, and it has been consequently said that *ex injuriâ sine damno oritur actio* (a).

The interruption, however temporary and however slight, of another's absolute right, is considered by law as a proper subject for reparation, and substantial damages have more than once been awarded where the surroundings of the plaintiff have been very considerably improved and his comforts very considerably heightened for the period during which the defendant has prevented him from exercising the right in question. But where no absolute right has been invaded, then some substantial loss of money, comfort, or health inflicted upon the plaintiff beyond that suffered by the rest of the public, by the unlawful act or omission, must be proved. The reason of this is very clear and very reasonable. In the case of the infringement of a right, there is a grievance peculiar to the party injured, as distinguished from the public generally; but where no right is infringed, but merely an unlawful act or omission committed or made, there the grievance is properly one affecting the public and not any private individual in par-

(a) This maxim can obviously only be accurate by using the word *injuria* in the sense of a *private* injury, for a mere public wrong will not alone sustain an action. If, however, we use it in this sense in the maxim *ex damno sine injuriâ non oritur actio*, it becomes obvious that it is too narrow, because a loss caused connected with a *public* wrong is sufficient. I have therefore in this work used the word *injuria* in the sense of a wrongful act or omission, independently of the question whether such act or omission was wrongful only *quâ* some individual or *quâ* the public generally, and I have used the word *damnum* as signifying a private grievance.

ticular; and if every member of the public were allowed to bring actions in respect of it, there would be no limit to the number of actions which might be brought (*Winterbottom v. Lord Derby*, *L. R.*, 2 *Ex.* 316). The remedy of the public is by indictment, if the unlawful act amounts to so serious a dereliction of duty as to constitute an injury to the public. But if in addition to the injury to the public, a special, peculiar, and substantial damage is occasioned to an individual, then it is only just that he should have some private redress. Let us now glance at some illustrations of the foregoing rule:—

(1) If one trespasses upon another's land, that is the invasion of an absolute right; but if the trespass was committed in self-defence, in order to escape from some pressing danger, no action will lie in respect of it, because the law authorizes the commission of a trespass for such a purpose; and, therefore, although there was a *damnum*—namely, a private grievance, there was no *injuria* or wrongful act, and the trespass was consequently a *damnum absque injuria* (27 Hen. 6, 37, pl. 26).

(2) Again, if I own a shop which greatly depends for its custom upon its attractive appearance, and a company erect a gasometer hiding it from the public, no action is maintainable by me; because, although my trade may be ruined by the obstruction, yet the gas company are only doing an act authorized by law, namely, building upon their own land (*Butt v. Imperial Gas Co.*, *L. R.*, 2 *Ch. App.* 158).

(3) A legally qualified voter duly tenders his vote to the returning officer, who wrongly refuses to re-

gister it. The candidate for whom the vote was tendered gains the seat, and no loss whatever, either in money, comfort, or health, is suffered by the rejected voter; yet his absolute right to vote at the election is infringed, and that by an unlawful act of the returning officer, and hence we have here an *injuria* and a *damnum* sufficient to support an action (*Ashby v. White*, 1 Sm. L. C. 251).

(4) A man erected an obstruction in a public way. The plaintiff was delayed on several occasions in passing along it, being obliged, in common with every one else who attempted to use the road, either to pursue his journey by a less direct road, or else to remove the obstruction. It was held, however, that he could not maintain an action, because although there had been an unlawful act on the part of the defendant, yet there was no invasion of an absolute right, and no substantial damage peculiar to the plaintiff beyond that suffered by the rest of the public (*Winterbottom v. Lord Derby*, L. R., 2 Ex. 316).

(5) The defendants left an unfenced hole upon premises of theirs adjoining a highway. The plaintiff, in passing along the highway at night, fell into the hole, and was injured. Here the plaintiff clearly suffered a special and substantial damage beyond that suffered by the rest of the public, and accordingly he recovered damages (*Hudley v. Taylor*, L. R., 1 C. P. 53).

(6) To give one more example similar to the last. The plaintiff kept a coffee-house in a narrow street. The defendants were auctioneers, carrying on an ex-

tensive business in the same neighbourhood, having an outlet at the rear of their premises next adjoining the plaintiff's house, where they were constantly loading and unloading goods into and from their vans. The vans intercepted the light from the plaintiff's coffee-house to such an extent, that he was obliged to burn gas nearly all day, and access to his shop was obstructed, and the smell from the horses' manure made the house uncomfortable. Here there was a state of facts constituting a public nuisance, but there was also a direct and substantial private and particular damage to the plaintiff, beyond that suffered by the rest of the public, so as to entitle him to maintain an action (*Benjamin v. Storr*, *L. R.*, 9 *C. P.* 400; and see also *White v. Hindley Local Board*, *L. R.*, 10 *Q. B.* 219).

Of Injuriæ, or Wrongful Acts. In the words of Pratt, C. J., "torts are infinitely various, for there is not anything in nature that may not be converted into an instrument of mischief" (see *Chapman v. Pickersgill*, 2 *Wils.* 146). It is, therefore, hopeless to attempt any definition of what constitutes a wrongful act or *injuria*, upon which an action for tort may be founded; but, broadly speaking, the following rule may, perhaps, give the student some standard by which to measure particular cases:—

RULE 2.—A man is guilty of an *injuria* who, without authority or excuse, either—

(a) Wittingly or unwittingly does any act,

- or makes any written or verbal statement, which infringes upon any absolute right of another person ;
- (b) Wittingly or unwittingly does any act which is forbidden by law ;
 - (c) Omits to do something which a reasonable man would do, or does something which a reasonable man would not do ;
 - (d) Makes any false statement, either written or verbal, to another, with intent to deceive ;
 - (e) Omits to make any statement with intent to deceive in cases in which there is a legal duty upon him to make such statement.

Roughly speaking, therefore, *injuriæ* proceed either from misdeeds, neglects or frauds.

Involuntary Injuriæ. Where the act or omission not authorized by law is committed involuntarily, no action lies.

RULE 3.—No person is legally responsible for any act or omission not attributable to active or passive volition on his part.

I do not mean to say that a man who sins from ignorance, and not from malice, is thereby excused.

Far from it, for by reasonable inquiry he might set himself right; and, indeed, on grounds of public policy alone, apart from metaphysical considerations, it is obvious that it would be highly inconvenient and dangerous to admit any such doctrine. The above rule, differently put, means, in the language of an ancient justice, that "no man shall be excused of a trespass, unless it be judged utterly without his fault."

(1) A horse driven by the defendant was alarmed by the noise caused by a butcher's cart driven furiously along the street, and, becoming ungovernable, ran away and injured the plaintiff's horse. It was, however, held, that as the act was involuntary on the defendant's part, he was not liable (*Wakeman v. Robinson*, 1 Bing. 213; and see *Beckwith v. Shordike*, 4 Burr. 2092; and *Scott v. London Dock Co.*, 34 L. J., Ex. 220).

(2) Under the Metropolis Local Management Act (18 & 19 Vict. c. 120), a duty is imposed upon the vestry, of properly cleansing the sewers vested in them. Under the premises of the plaintiff was an old drain, which was one of the sewers vested in the vestry. This drain having become choked, the soil therefrom flowed into the cellars of the plaintiff and did damage.

In an action against the vestry, the jury found (*inter alia*) that the obstruction was unknown to the defendants, and could not by the exercise of reasonable care have been known to them. Held, that upon this finding the defendants were entitled to the verdict (*Hammond v. Vestry of St. Pauls*, L. R., 9 C. P. 316).

(3) On the defendant's land were artificial pools,

containing large quantities of water. These pools had been formed by damming up, with artificial embankments, a natural stream which rose above the defendant's land and flowed through it, and which was allowed to escape from the pools successively by weirs into its original course. An *extraordinary* rainfall caused the stream and the water in the pools to swell, so that the artificial embankment was carried away by the pressure, and the water in the pools being suddenly loosed, rushed down the course of the stream and injured the plaintiff's adjoining property. The plaintiff having brought an action against the defendant for damages, the jury found that there was no negligence in the construction or maintenance of the works, that the rainfall was most excessive, and amounted to a *vis major*, or visitation of God. Under these circumstances, it was held, that no action was maintainable, because, as Bramwell, B., said, "the defendant had done nothing wrong; he had infringed no right. It was not the defendant who let loose the water and sent it to destroy the bridges. He did, indeed, store it, and stored it in such quantities that if it were let loose it would do, as it did, mischief. But suppose a stranger let it loose, would the defendant be liable? If so, then if a mischievous boy bored a hole in a cistern in any London house, and the water did mischief to a neighbour, the occupier would be liable; but that cannot be. Then why is the defendant liable, if some agent over which he has no control lets the water out? The defendant merely brought the water to a place, whence another agent let it loose, *but the act is that of an agent he*

cannot control” (*Nichols v. Marshland*, *L. R.*, 10 *Ex.* 255; affirmed, *L. R.*, 2 *Ex. Dir.* 1).

(4) The above case must be carefully distinguished from the well-known leading case of *Rylands v. Fletcher* (*L. R.*, 3 *H. L.* 330), the facts of which were as follows:—The plaintiff was the lessee of mines. The defendant was the owner of a mill, standing on land adjoining that under which the mines were worked. The defendant desired to construct a reservoir, and employed competent persons to construct it, so that there was no question of negligence. The plaintiff had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts, communicating with the land above, which had also been out of use for years, and were apparently filled with marl and earth of the surrounding land. Shortly after the water had been introduced into the reservoir, it broke through some of the vertical shafts, flowed thence through the old passages, and finally flooded the plaintiff’s mine. It was contended on behalf of the defendant that there was no negligence on his part, and that if he were held liable, it would make every man responsible for every mischief he occasioned, however involuntarily, or even unconsciously, whereas he contended that knowledge of possible mischief was of the very essence of the liability incurred by occasioning it. The House of Lords, however, held the defendant to be liable, on the ground that “a person who, for his own purposes, brings on his land, and collects and keeps there, anything likely to do mischief if it escapes, must

keep it at his peril, and if he does not do so is *prima facie* responsible for all the damage which is the natural consequence of its escape." It therefore appears that the act which was not authorized by law was *the allowing the water to escape*, and whether this was the result of negligence, or whether it was the result of a latent and undiscovered defect in the engineering works, was quite immaterial. The escape of the water was caused by something of which the defendant was *ignorant*, not by something altogether beyond his control or volition, like a visitation of providence. The distinction between *Rylands v. Fletcher* and *Nichols v. Marsland* is no doubt subtle, and somewhat difficult for the lay mind to grasp at first sight, but a little consideration will, I think, show that it entirely depends upon the rule of which I have made the two cases examples (see also *Hurdman v. N. E. R. Co., L. R., 3 C. P. Div. 168*).

(5) Again, where the defendant by mistake mowed the plaintiff's grass, he was held to be a trespasser, although he had committed the trespass quite unintentionally, and in ignorance that he was not upon his own land (*Baseley v. Clarkson, 3 Lec. 37*).

Sub-rule.—*The law presumes that an act or omission done or neglected under the influence of pressing danger, was done or neglected involuntarily.*

This doctrine would seem to be founded upon the maxim that self-preservation is the first law of nature, and that where it is a question whether one of two men shall suffer, each is justified in doing the best

that he can for himself. Indeed, so far has this doctrine been carried, that it is said, that if two shipwrecked persons are attempting to save themselves by means of a plank which is not sufficiently large to sustain them both, one of them is justified in pushing the other off. This however is an example rather appertaining to criminal than civil law.

(1) A person wrongfully threw a squib on to a stall, the keeper of which, in self-defence, threw it off again; it then alighted on another stall, was again thrown away, and, finally exploding, blinded the plaintiff. The liability of the persons who threw it away from their stalls in self-defence was not the question before the court, but a dictum of Chief Justice De Grey is a good illustration of the sub-rule. He said, "It has been urged, that the intervention of a free agent will make a difference; but I do not consider Willis and Ryal (the persons who merely threw away the squib from their respective stalls) as free agents in the present case, but acting under a compulsive necessity for their own safety and self-preservation" (*Scott v. Shepherd*, 2 W. Bl. 894). The first example of the first rule (*supra*) is another example of the above sub-rule.

Unintentional Injuries. Although, as we have seen, no act or omission can be said to be wrongful unless it is within the power of the person doing or omitting to abstain from doing or omitting to do it, and although, therefore, every wrongful act must in a certain sense be either actively or passively

intentional, yet it is no defence to an action that the wrongdoer did not intend to cause any *damage*.

RULE 4.—Every person is presumed to intend the probable consequence of every voluntary act or omission of his, not authorized by law.

Of course an intention to inflict an injury makes a tort very much more serious from a moral point of view, and, as we shall see hereafter, is an important factor in assessing the amount of damages to be awarded to the injured party; but nevertheless actual intention is not a necessary ingredient, being always irrebutably presumed.

(1) In the above-mentioned case of *Scott v. Shepherd*, the person who first started the squib was held liable for the loss of the plaintiff's eye, although it was proximately caused by the last person who removed it from his stall.

(2) A person has an unguarded shaft or pit on his premises. If another, lawfully coming on to the premises on business, falls down the shaft, and is injured, he may bring his action, although there was no intention to cause him or anyone else any hurt (*Indermaur v. Dames*, *L. R.*, 2 *C. P.* 311).

Remoteness of Damage. The rule, however, is subject to the following qualification:—

Sub-rule.—No action lies where the *injuria* and *damnum* are not usually found in sequence, unless it be shown that the defendant knew, or had reasonable means

of knowing, that consequences, not usually resulting from the act, were, by reason of some existing cause, likely to intervene so as to cause damage to a third person.

(1) The defendant, in breach of the Police Act (2 & 3 Vict. c. 47, s. 54), washed a van in a public street, and allowed the waste water to run down the gutter towards a grating leading to the sewer, about twenty-five yards off. In consequence of the extreme severity of the weather the grating was obstructed by ice, and the water flowed over a portion of the causeway, which was ill-paved and uneven, and there froze. There was no evidence that the defendant knew of the grating being obstructed. The plaintiff's horse, while being led past the spot, slipped upon the ice and broke its leg. In giving judgment in an action brought in respect of this damage, Chief Justice Bovill said: "No doubt one who commits a wrongful act is responsible for the ordinary consequences which are likely to result therefrom;" but "where there is no reason to expect it, and no knowledge in the person doing the wrongful act that such a state of things exists as to render the damage probable, if injury does result to a third person it is generally considered that the wrongful act is not the proximate cause of the injury, so as to render the wrongdoer liable to an action. If the drain had not been stopped, and the road had been in a proper state of repair, the water would have passed away without doing any mischief to anyone. Can it then be said to have been the ordinary and probable consequence of the defendant's act that the

water should have frozen over so large a portion of the street so as to occasion a dangerous nuisance? I think not. There was no distinct evidence to show the cause of the stoppage of the sink or drain, or that the defendant knew it was stopped. He had a right, then, to expect that the water would flow down the gutter to the sewer in the ordinary course, and, but for the stoppage (for which the defendant is not responsible), no damage would have been done." And accordingly judgment was given in favour of the defendant (*Sharp v. Powell, L. R., 7 C. P. 258*).

(2) But where water, which had trickled down from a waste-pipe at a railway station on to the platform, had become frozen, and the plaintiff, a passenger, stepped upon it and fell and was injured, the court held the defendants liable, on the ground, probably, that the non-removal of a *dangerous nuisance* like ice from their premises was the proximate cause of the injury (*Shepherd v. Mid. R. Co., cited by plaintiff arguendo, Sharp v. Powell, supra*).

(3) Again, a brig, by the negligence of those on board her, came into collision with a barque. In the collision the main rigging of the barque was carried away, and shortly afterwards her fore and main masts went by the board. Towards evening of the same day the wind increased in violence, and eventually the barque was driven on shore and some of the crew were drowned. It was held, that as the loss of the masts was the proximate cause of the wreck, and as the loss of the masts was the immediate result of the collision, the loss of life was the result of the

collision (*The George and Richard*, L. R., 3 A. & E. 466).

Statutory Rights and Duties. RULE 5.—

When a statute gives a right, or creates a duty, in favour of an individual or class of individuals, then unless it enforces the duty by a penalty recoverable by the *party aggrieved*, (as distinguished from a common informer,) any infringement of such right, or breach of such duty, will, if coupled with damage, be a tort remediable in the ordinary way.

(1) An illustration of this rule is given by the case of *Couch v. Steel* (3 E. & B. 402), the facts of which were shortly as follows:—By the statute 7 & 8 Vict. c. 112, s. 18, “every ship navigating between the United Kingdom and any place out of the same, shall have, and keep on board, a sufficient supply of medicines and medicaments suitable to accidents and diseases arising on sea voyages.” To enforce performance of this section a penalty is imposed upon those disobeying it.

The plaintiff, having suffered damage in consequence of the default of the defendant in not obeying this section, brought an action.

It was held, that the action would lie; because the statute had created a duty, and although it had given a remedy for the public wrong committed by its violation, viz., the penalty, yet it had not given any remedy to a private person suffering special

damage; and “the right to maintain an action for special damage resulting from a breach of public duty is not taken away, by reason of a penalty, recoverable by a common informer, being annexed as a punishment for the non-performance of a public duty, although it is competent for the plaintiff to sue for the penalty if first in the field” (*Beckford v. Hood*, 7 *I. R.* 627). In such cases, the penalty is cumulative upon the ordinary remedy by action; the one being a punishment for the breach of a public duty, the other a recompense for a private wrong (*Id.* 38).

(2) Water companies are, by Act of Parliament, obliged to keep their pipes to which fire plugs are attached constantly charged with water at a certain pressure, and are to allow all persons, at all times, to use the same for extinguishing fire, without compensation; and for neglect of this duty a penalty is imposed, recoverable by a common informer. On a demurrer to a declaration by which the plaintiff claimed damages against a water company for not keeping their pipes charged as required, whereby his premises were burnt down, it was held that the action would lie (*Atkinson v. Gateshead Waterworks Co.*, *L. R.*, 6 *Ex.* 404).

Statutory Remedy. Sub-rule 1.—*But where the statute creating a new duty, or obligation, provides a mode of obtaining compensation for private special damage by means of a penalty recoverable by the party aggrieved, there is no other remedy,—as the remedy is then prescribed by the act* (per Campbell, C. J., *Couch v. Steel*, *sup.*; *Underhill v. Ellicombe*, *McCl. & Y.* 455).

Where no Right created. Sub-rule 2.—

Where a duty is created by a statute for the purpose of preventing a mischief of a particular kind, a person who, by reason of another's neglect of the statutory duty, suffers a loss of a different kind is not entitled to maintain an action for damages in respect of such loss (Gorris v. Scott, L. R., 9 Ex. 125).

(1) Thus, in the above case, the defendant, a ship-owner, undertook to carry the plaintiff's sheep from a foreign port to England. On the voyage, some of the sheep were washed overboard, by reason of the defendant's neglect to take a precaution enjoined by an order of the Privy Council, which was made under the authority of the Contagious Diseases (Animals) Act, 1869. It was however held, that the object of the statute and order being to prevent the spread of contagious disease among animals, and not to protect them against the perils of the sea, the plaintiffs could not recover.

(2) And so, where certain regulations were established by statute for the management of the pilchard fishery, and enforced by the imposition of penalties; it was held, that a fisherman who had lost his proper turn and station, according to the regulations, through the breach of them by another fisherman, could not maintain an action for damages against him, for the loss of a valuable capture of fish, which the latter had taken, through being in such wrong place; as the object of the statute was to regulate the fishery, and not to give any individual fisherman a right to any particular place (*Sterens v. Peacocks*, 11 Q. B. 711).

(3) But where, by 4 & 5 Vict. c. 45, s. 17, a penalty

is imposed upon unauthorized persons unlawfully importing books, reprinted abroad, upon which copy-right subsists, the remedy by action is not taken away from the authors; for there is a right created in their favour, and, therefore, the penalty is cumulative (*Novello v. Sudlow*, 12 *C. B.* 188).

Felonies. RULE 6.—Where an injury amounts to an infringement of the civil rights of an individual, and at the same time to a felonious wrong, the civil remedy by action is suspended until the party inflicting the injury has been prosecuted (*Cockburn, C. J., Wells v. Abrahams, L. R., 7 Q. B.* 557).

But although this is the rule, it is extremely doubtful how it can be enforced. It is certainly no ground for the judge at the trial to direct a nonsuit (*Wells v. Abrahams, sup.*), and it is excessively doubtful whether it could be raised by plea, because “the effect of that would be to allow a party to set up his own criminality. But it may well be, that if an action were brought against a person who was either in the course of being prosecuted for felony, or was liable to be prosecuted for felony, the summary jurisdiction of the court might be invoked, to stay the proceedings which would involve an undue use, probably an abuse, of the process of this court; in which case the court is always willing to interfere to prevent such abuse”

(per Cockburn, C. J., *ibid*). And in the same case, Blackburn, J., said, "I do not see how a plaintiff can be prevented from trying his action, unless the court, acting under its summary jurisdiction, interfere." . . . "From the time these cases were decided, there is no reported instance of the court having interfered to stop an action until we come to *Gimson v. Woodful* (2 C. & P. 41). That case went to this extent, that where a horse had been stolen by A., and B. afterwards had the horse, the owner could not afterwards bring an action to recover it from B., unless he had prosecuted A. But in *White v. Spettigue* (13 M. & W. 603) that was expressly overruled. The last case is *Wellock v. Constantine* (32 L. J., C. P. 285)." . . . "That case, I think, cannot be treated as an authority" . . . "to say that because it was for the interest of the public, the action should be stayed until the indictment was tried, and for this purpose to nonsuit the plaintiff, or to direct the jury to find a verdict for the defendant upon issues not proved, seems to me to be erroneous."

The principle to be gathered from this case, therefore, would seem to be, that although the rule exists, it is rarely, if ever, enforced; and that the only way of enforcing it, is by the summary jurisdiction of the court, interfering not at the instance of the defendant, but for the purposes of public justice, and to prevent abuse of its process.

It would seem that the rule does not apply to an action *in rem* (see the "*Princess Royal*," L. R., 3 A. & E. 41).

CHAPTER II.

OF QUASI TORTS.

Arising ex Contractu. Although a tort has been defined, as a wrong independent of contract, there is nevertheless a class of wrongs, which lie on the borderland, as it were, between contract and tort, and for which an action *ex contractu*, or *ex delicto*, may generally be brought at the pleasure of the party injured.

RULE 7.—Whenever there is a contract, and something to be done in the course of the employment, which is the subject of that contract, if there be a breach of duty in the course of that employment, the plaintiff may recover either in tort, or in contract (*Brown v. Boorman*, 11 *Cl. & F.* 44).

(1.) **Negligence of Professional Men.** Thus if an apothecary carelessly or unskilfully administer improper medicines to a patient, whereby such patient is injured, he may sue him either for the breach of his implied contract to use reasonable skill and care, or for tortious negligence, followed by the actual damage (*Scarl v. Prentice*, 8 *East*, 847).

(2.) **Waste.** So where a person having an estate for life or years commits waste, it is both a breach of the implied contract to deliver up the premises in as good a condition as when he entered upon them, and also an injury to the reversion, which is a violation of the reversioner's right, and therefore a tort.

Privity necessary. But as a tort founded upon contract can only properly arise out of an infringement of some duty created by the contract it is a well-established rule, that—

RULE 8.—Whenever a wrong is founded upon a contract, no one not a privy to the contract can sue in respect of such wrong (*Tollit v. Shenstone*, 5 M. & W. 289).

Thus a master cannot sue a railway company for loss of services, caused by his servant being injured by the company's negligence when being carried by them; for the injury in such a case arises out of the contract between the company and the servant, to which the master is no party (*Alton v. Mid. Ry. Co.*, 34 L. J., C. P. 292).

When Privity unnecessary. Sub-rule.—*But where there is a distinct tort to the plaintiff altogether separate and apart from the breach of contract to a third party, although connected with it, the plaintiff may maintain an action.*

(1) Thus in cases of fraud (as is hereafter mentioned) a man is responsible for the consequences of a breach of a warranty made by him to another, upon the faith of which a third person acts; provided that such false representation was made with the direct intent that it should be acted upon by such third person (*Barry v. Crosbey*, 2 *Johns. & H.* 21).

(2) And so where a father bought a gun for the use of himself and his son, and the defendant sold it to him *for that purpose*, fraudulently representing it as sound, and it exploded and injured the son, it was held that he could maintain an action of tort, although not privy to the warranty (*Langridge v. Levy*, 4 *M. & W.* 333).

(3) So if a surgeon treat a child unskilfully, he will be liable to the child, even though the parent contracted with the surgeon (*Pippin v. Sheppard*, 11 *Price*, 400).

(4) So “a stage-coach proprietor who may have contracted with a master to carry his servant, if he is guilty of neglect, and the servant sustain personal injury, is liable to him; for it is a misfeasance towards him if, after taking him as a passenger, the proprietor drives without due care” (*Longmeid v. Holliday*, 6 *Er.* 767, per Parke, B.).

(5) And so where a servant travelling with his master, who took his ticket and paid for it, lost his portmanteau through the railway company’s negligence, he was held entitled to sue the company (*Marshall v. York, &c. R. Co.*, 21 *L. J., C. P.* 34).

Misfeasance. There is a class of contracts which are particularly nearly allied to torts. Such are, gratuitously undertaken duties. Such duties are not contracts in one sense, namely, that being without consideration the contractor is not liable for their nonfeasance, *i. e.* for omitting to perform them. But on the other hand, if he once commences to perform them, the contract then becomes choate as it were, by virtue of the following rule—

RULE 9. — The confidence induced by undertaking any service for another, is a sufficient legal consideration to create a duty in its performance (*Coggs v. Bernard*, 1 Sm. L. Ca. 177, 6th ed.).

Thus in the above case, the defendant gratuitously promised the plaintiff to remove several hogsheads of brandy from one cellar to another, and in doing so one of the casks got staved through his gross negligence. Upon these facts, it was decided that the defendant was liable; for although his contract could not have been enforced against him, yet having once entered upon the performance of it, he thence became liable for all misfeasance.

Bailments. Such is a brief account of the law upon this head:

In some works, injuries to goods whilst in the keeping of carriers and innkeepers are described as

torts; in others as breaches of contract; but however actions in respect of them may be framed, they are in substance *ex contractu*, being for non-performance of the contract of bailment, and not for a tort independent of contract (*Rose*. 539; 2 *Bl. Com.* 451; *Legge v. Tucker*, 26 *L. J.*, *Ex.* 71). I shall therefore not treat of them in this work.

CHAPTER. III.

OF THE LIABILITY OF MASTERS FOR THE TORTS OF
THEIR SERVANTS.

General Liability. It is a well-known legal maxim, that *qui facit per alium, facit per se*, whence the following rule is easily deduced—

RULE 10.—A person who puts another in his place, to do a class of acts in his absence, is answerable for the wrong of the person so intrusted, either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what is done is not done from any caprice of the servant, but in the course of the employment (*Bayley v. Manchester, Sheff. & Lincoln. R. Co., L. R., 7 C. P. 415*).

(1) Thus if a servant drive his master's carriage over a bystander; or if a gamekeeper employed to kill game, fire at a hare and kill a bystander; or if a workman employed in building, negligently drop a stone from the scaffold, and so hurt a bystander; the person injured may claim reparation from the master; because the master is bound to guarantee the public against all damage arising from the

wrongful or careless acts of himself, or of his servants when acting within the scope of their employment (*Bartonshill Coal Co. v. Reid*, 3 Macq. H. L. Ca. 266).

Acts done outside the Employment. Sub-rule 1.—*A master is not responsible for the wrongful act of his servant, unless the act was an act done by the servant in the course of his employment.*

(1) It was the course of employment of the carman of the defendant, who was a brewer, with the defendant's horse and cart to deliver beer to the customers, and on his return collect empty casks, for each of which he received a penny. The carman having, without the defendant's permission, taken out the horse and cart *for a purpose entirely of his own*, on his way back collected some empty casks, and while thus returning the plaintiff's cab was injured by the carman's negligent driving. Under these circumstances, it was held that the defendant was not liable, and Lindley, J., said, "The question is, whether under these circumstances, the servant was acting in the course of his employment. In my judgment he was not. It is certain that the servant did not go out in the course of the employment. Does it alter the case, that whilst coming back, he picks up the casks of a customer? I think it does not. He was returning on a purpose of his own, and he did not convert his own private occupation into the employment of his master simply by picking up the casks of a customer. The conclusion, therefore, to which I come is, that the servant was not engaged in his master's business in any sense,

and therefore our judgment must be for the defendant" (*Rayner v. Mitchell*, 25 W. R. 632).

(2) So, where a master intrusted his servant with his carriage for a given purpose, and the servant drove it for another purpose of his own in a different direction, and in doing so drove over the plaintiff, the master was held not to be responsible, on the ground that the servant was not acting within the scope of his employment; for he had started upon a new and entirely independent journey which had nothing to do with his employment (*Storrey v. Ashton*, L. R., 4 Q. B. 476). But if the servant when going on his master's business had merely taken a somewhat longer road, such a deviation would not be considered as taking him out of his master's employment (*Mitchell v. Crossweller*, 22 L. J., C. P. 100; and see *Whiteley v. Pepper*, L. R., 2 Q. B. D. 276).

(3) So, where a servant wantonly, and not in the execution of his master's orders, struck the plaintiff's horses, and so produced an accident, the master was held not to be liable (*Croft v. Alison*, 4 B. & A. 590).

Wilful act. Sub-rule 2.—*A master is responsible for the manner in which his servant does an act for the master's benefit, which act is within the scope of his probable authority, even though such manner was contrary to the master's orders; but a master is not responsible for an act of his servant which is in itself, and not merely in the manner of doing it, illegal.*

(1) In *Limpus v. London General Omnibus Co.* (11 W. R. 149; 7 L. T., N. S. 245), the driver of an omnibus plying between P. and K., whilst plying between those places, wilfully, and contrary to express

orders from his master, pulled across the road, in order to obstruct the progress of the plaintiff's omnibus. In an action of negligence, it was held that if the act of driving across to obstruct the plaintiffs' omnibus, although a reckless driving, was nevertheless an act done in the course of the driver's service, and to do that which he thought best for the interest of his master, the master was responsible; that his liability depended upon the conduct of the servant in the course of his employment, and that the orders given to him not to obstruct were immaterial. And Willes, J., said, "It is perfectly well known that there is substantially no remedy whatever against the driver of an omnibus, and therefore it is necessary that for what he does in the course of his master's service the master should answer. There should be some person who is capable of paying damages, and who may be sued by people who are injured by improper driving. It appears to me that this was a case of improper driving, and not a case in which the servant did anything altogether inconsistent with the discharge of his duty towards his master and out of the course of his employment, a fact upon which it appears to me that the case turns. This omnibus of the defendants was driven before the omnibus of the plaintiffs. Now, of course, one may say that it is no part of the duty of a servant to obstruct another omnibus; and in this case the servant had distinct orders not to obstruct the other omnibus. I beg to say that in my opinion those instructions were perfectly immaterial. If they were disregarded, the law casts upon the master the liability for the acts of his servants in the course of

his employment; and the law is not so futile as to allow the master, by giving secret instructions to his servant, to set aside his own liability. I hold it to be perfectly immaterial that the master directed the servant not to do the act which he did. As well might it be said that if a master employing a servant told him that he should never break the law, he may thus absolve himself from all liability for any act of his servant, though in the course of his employment. . . . The proper question for the jury to determine is, whether what was done was in the course of the employment, and for the benefit of the master." Blackburn, J., also, quoting and approving the charge of the learned judge who tried the case, said, "If the jury came to the conclusion that he did it, not to further his master's interest, not in the course of his employment as an omnibus driver, but from private spite, with an object to injure his enemy—who may be supposed to be the rival omnibus—that would be out of the course of his employment. That saves all possible objections."

(2) The case of *Poulton v. London and South-Western R. Co.* (*L. R.*, 2 *Q. B.* 534) seems, at first sight, to be inconsistent with the above case. There, a station-master having demanded payment for the carriage of a horse conveyed by the defendants, arrested the plaintiff, and detained him in custody until it was ascertained by telegraph that all was right. The railway company had no power whatever to arrest a person for nonpayment of carriage, and therefore the station-master, in arresting the plaintiff, did an act that was wholly illegal, not in

the mode of doing it, but in the doing of it at all. Under these circumstances, the court held that the railway company were not responsible for the act of their station-master; and Blackburn, J., said: "In *Limpus v. General Omnibus Co.*, where the question was, whether or not the direction of my brother Martin was erroneous, there was a difference of opinion. The late Mr. Justice Wightman thought it was; that the learned judge had gone too far to make the company liable: the other judges thought that there had been no misdirection, and that the act done by the driver was within the scope of his authority, though no doubt it was a wrongful and improper act, and, therefore, that his masters were responsible for it. In the present case, an act was done by the station-master completely out of the scope of his authority, which there can be no possible ground for supposing the railway company authorized him to do, and a thing which could never be right on the part of the company to do. Having no power themselves, they cannot give the station-master any power to do the act." And Mellor, J., said: "If the station-master had made a mistake in committing an act which he was authorized to do, I think in that case the company would be liable, because it would be supposed to be done by their authority. Where the station-master acts in a manner in which the company themselves would not be authorized to act, and under a mistake or misapprehension of what the law is, then I think the rule is very different, and I think that is the distinction on which the whole matter turns."

(3) In *Goff v. Great Northern R. Co.* (3 E. & E. 672), on the other hand, the act was the arresting a man for the benefit of the company where there was authority to arrest a passenger for nonpayment of his fare; and the court accordingly held, that the policemen who were employed, and the station-master, must be assumed to be authorized to take people into custody whom they believed to be committing the act, and that if there was a mistake, it was a mistake within the scope of their authority.

(4) So, again, in *Bayley v. Manchester, Sheffield and Lincoln R. Co.* (L. R., 7 C. P. 415), the plaintiff, a passenger on the defendants' line, sustained injuries in consequence of being pulled violently out of a railway carriage by one of the defendants' porters, who acted under the erroneous impression that the plaintiff was in the wrong carriage. The defendants' bye-laws did not expressly authorize the company's servants to remove any person being in a wrong carriage, or travelling therein without having first paid his fare and taken a ticket, and they even contained certain provisions which implied that the passengers should be treated with consideration; but nevertheless, the court considered that it was within the probable scope of a porter's authority to gently remove any person in a wrong carriage, and as the porter had exercised his probable authority violently, they held that the company was responsible (see also *Seymour v. Greenwood*, 6 H. & N. 359).

Doctrine of Ratification. The preceding remarks have reference only to cases in which the

injury has been occasioned either by the negligence of the servant in the course of his employment, or by his wilful act, done under such circumstances as make it probable that he was authorized to commit it, upon proper occasion, but had used such authority injudiciously or carelessly. But there is a third class which differs from both of these, viz. where a servant commits a tort whilst not acting in pursuance of his master's employment, but which the master subsequently adopts.

RULE 11.—A tortious act done for another, by a person not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal if subsequently ratified by him, and whether it be for his detriment or his advantage, to the same extent as the same act done by his previous authority (*Wilson v. Tumman*, 6 M. & Gr. 242).

This rule is generally expressed by the maxim, "*Omnis ratihabitio retrotrahitur, et mandato priori equiparatur*," and is equally applicable to torts and to contracts. It should be observed that the act *must* have been done for the use or for the benefit of the principal (4 Inst. 317; *Wilson v. Barker*, 4 B. & Ad. 614; and judgment, Dallas, C. J., *Hull v. Pickersgill*, 1 B. & B. 286).

Meaning of "Servant." The term "servant" does not exclusively apply to menials.

RULE 12.—When a man is hired by the master, either personally, or by those who are intrusted by the master with the hiring of servants, to do the business required of him, the master will be responsible for any torts committed by him within the scope of such business (*Laugher v. Pointer*, 5 B. & C. 547); but a contractor, sub-contractor, or other person exercising an independent employment, is not a servant within the meaning of the rule (*Rapson v. Cubitt*, 9 M. & W. 710; *Pearson v. Cor*, L. R. 2 C. P. D. 369).

(1) The first part of this rule applies not only to domestic servants but to clerks, managers, agents, and in short all whom the master appoints to do any work, and over whom he retains any control or right of control, even though they be not in the immediate employ, or under the immediate superintendence of the master. Thus “if a man is owner of a ship, he himself appoints the sailing master, and desires him to appoint and select the crew; the crew thus become appointed by the owner, and are his servants for the management of his ship; and if any damage happen through their default, it is the same as if it happened through the immediate default of the owner himself” (*Laugher v. Pointer*, *sup.*, per Littledale, J.).

(2) A contractor employed by navigation commissioners, in the course of executing the works flooded the plaintiff's land by improperly, and without

authority, introducing water into a drain insufficiently made by himself. Here the contractor, and not the commissioners, was held liable (*Allen v. Howard*, 7 Q. B. 960).

(3) So where a company contracted with A. to construct a railway, and A. sub-contracted with B. to construct a bridge on it, and B. employed C. to erect a scaffold under a special contract between him and C.; a passenger injured by the negligent construction of the scaffold could only sue C., and not A., B., or the company (*Knight v. Gex*, 5 Ex. 721).

(4) So where a butcher bought a bullock, and hired a licensed drover to drive it to his shop; and the drover instead of so doing employed a boy for the purpose; it was held that the butcher was not liable for the injurious consequences caused by the boy's negligence, as the relation of master and servant did not exist between them (*Milligan v. Wedge*, 12 A. & E. 737).

(5) So if the owner of a carriage hire horses from a job master, who at the same time provides a driver, the job master is liable for accidents caused by the driver's negligence, for he is his servant, and not that of the owner of the carriage (*Quarman v. Burnett*, 6 M. & W. 499; and *quà* the public a similar principle applies to cab proprietors and cab drivers (*Venables v. Smith*, L. R., 2 Q. B. D. 279).

Liability of Employer for Contractor's Torts. Sub-rule 1.—*A person employing a contractor will be liable for the contractor's wrongful acts, if either (a) the employer retains his control over the con-*

tractor, and personally interferes and makes himself a party to the act which occasions the damage; or (b) where the thing contracted to be done is itself unlawful; or (c) where a legal duty is incumbent upon the employer, and the contractor either omits or imperfectly performs such duty.

(1) Thus where the defendant employed a contractor to make a drain, and the contractor's man left some of the soil in the highway, in consequence of which an accident happened to the plaintiff, and afterwards the defendant, on complaint being made, promised to remove the rubbish, and paid for carting part of it away, *and it did not appear that the contractor had undertaken to remove it*; it was held that the defendant was liable (*Burgess v. Gray*, 1 C. B. 578).

(2) A company, unauthorized to interfere with the streets of Sheffield, directed their contractor to open trenches therein; the contractor's servants in doing so left a heap of stones, over which the plaintiff fell and was injured. Here the defendant company was held liable, as the interference with the streets was in itself an injuria or wrongful act (*Ellis v. Sheffield Gas Consumers' Co.*, 23 L. J., Q. B. 42).

(3) So where the defendants were authorized by an act of parliament to construct an opening bridge over a navigable river, a duty was cast upon them to construct it properly and efficiently; and where the plaintiff suffered loss through a defect in the construction and working of the bridge, it was held that the defendants were liable, and could not excuse themselves by throwing the blame on their contractor.

Temporary Employment by Another.

Sub-rule 2.—*Where a master temporarily lends his servant to another, under whose immediate control he is for the time being, and whose work he is doing, the master will not be responsible for his servant's torts committed during such temporary employment by another.*

(1) Thus in *Rourke v. White Moss Coal Co.* (L. R., 2 C. P. D. 205), the defendants had contracted with W. to sink a shaft for them at so much a yard, W. to provide all necessary labour, the defendants providing steam power and machinery, and two engineers, *to be under the control of W.* The plaintiff, one of W.'s workmen, was injured by the negligence of L., one of the defendants' engineers; but it was held that the company were not liable for this injury, on the ground, that although L. was their general servant, yet at the time of the injury he was not actually employed in doing their work, and was under the immediate control of W., to whom he had been lent by them, and whose servant, therefore, he must be considered to have been.

Unauthorized Delegation by a Servant.

RULE 13.—A master is not, in general, liable for the tortious acts of persons to whom his servant has, without authority, delegated his duties, and between whom and the master the relation of master and servant does not exist (*submitted*).

(1) Thus it is apprehended that if a master wrote to his groom and ordered him to take the carriage to

such a place, and the groom, instead of taking the carriage himself, employed A. to do it for him without having ever had any authority from the master to intrust A. with the carriage, and A. so carelessly drove the carriage as to injure B., no action would lie against the master, for the master never hired the groom for the purpose of employing others to do his work, and therefore, in intrusting the carriage to A., he would be acting beyond the scope of his employment, and beyond his probable authority.

(2) But if, on the other hand, the groom had taken A. with him, and had handed the reins to him, it is submitted that the master would be liable, because the handing of the reins to another whilst he was in the act of performing his duty would be a default in the performance of that duty, and not a complete retirement from its performance (see per Lord Abinger, *Booth v. Mister*, 7 C. & P. 66, and *Joel v. Morrison*, 6 C. & P. 503).

Such is a brief outline of the law relating to the responsibility of masters to third parties for the torts of their servants; but the learning on the subject is of so technical a character, and the distinctions as to when a servant is, and when not, acting within the scope of his employment, or even whether he be a servant at all, are so very refined, and the authorities are so conflicting, that a legal training is often necessary in order that the difference may be distinguished. I shall therefore content myself with the foregoing

general rules (which are believed to be accurate so far as they go), leaving to other and larger works on the law of master and servant the task of quoting the numerous cases on the subject and commenting upon the very subtle distinctions between them. I would particularly recommend the chapter on the master's liability contained in Mr. Manley Smith's excellent and exhaustive treatise on Masters and Servants, as a very complete exposition of the law on this subject, and would also call the student's attention to the reports of the following cases, namely:—*Storey v. Ashton*, *L. R.*, 4 *Q. B.* 476; *Whatman v. Pearson*, *L. R.*, 3 *C. P.* 422 (very conflicting); *Lord Bolingbroke v. Local Board of Strindon*, *L. R.*, 9 *C. P.* 575; *Murray v. Currie*, *L. R.*, 6 *C. P.* 24; *McManus v. Cricket*, 1 *East*, 106; *Gregory v. Piper*, 9 *B. & C.* 591; *Mitchell v. Crasweller*, 13 *C. B.* 237; *Francis v. Cockerill*, *L. R.*, 5 *Q. B.* 184; *Lyons v. Marten*, 8 *A. & E.* 512; *Overton v. Freeman*, 11 *C. B.* 867; *Cuthbertson v. Parsons*, 21 *L. J.*, *C. P.* 165; *Welfare v. L. B. & S. C. R. Co*, *L. R.*, 4 *Q. B.* 693; and *Wilson v. Merry*, *L. R.*, 1 *H. L.* 326.

Liability of Master for Injuries caused by Servant to Fellow-servant. RULE 14.—A master is not liable to his servant for damage resulting from the negligence of his fellow-servant in the course of their common employment, unless the servant causing the

injury was incompetent to discharge his duty, or the servant injured was not at the time acting in his master's employment.

(1) Thus where a workman at the top of a building carelessly let fall a heavy substance upon a fellow workman at the bottom, the master was held not to be responsible, without proof of the incompetency of the workman causing the injury to discharge the duty in which he had been employed (*Wiggett v. Fox*, 25 L. J., Ex. 118).

(2) So in *Hall v. Johnson* (34 L. J., Ex. 222), the plaintiff was a miner in defendants' employ, as was also an underlooker whose duty it was to see that as the mine was excavated the roof should be propped up. This he neglected to do, whereby a stone fell and injured the plaintiff; but it was held that this attached no liability to the defendants, as no proof was given that they did not use due care in selecting the underlooker for his post.

Meaning of Common Employment. Sub-rule:—*It is not necessary to the application of the above rule, that the servant causing, and the servant sustaining, the injury, should both be engaged in precisely the same, or even similar acts, so long as the risk of injury from the one is so much a natural and necessary consequence of the employment which the other accepts, that it must be included in the risks which have to be considered in his wages* (*Morgan v. Vale of Neath R. Co.*, L. R., 1 Q. B. 149; *Allen v. New Gas Co.*, L. R., 1 Ex. D. 251).

(1) Thus the driver and guard of a stage-coach; the steersman and rowers of a boat; the man who draws the red-hot iron from the forge, and the man who hammers it into shape ; the person who lets down into or draws up from a pit, or the miners working therein, and the miners themselves; all these are fellow labourers within the meaning of the doctrine (*Bartonshill Coal Co. v. Reid*, 4 Jur., N. S. 767). The real test seems to be, whether they are engaged in the same pursuit.

(2) In *Morgan v. Vale of Neath R. Co.* (L. R., 1 Q. B. 149), the plaintiff was in the employ of a railway company as a carpenter, to do any carpenters' work for the general purposes of the company. He was standing on a scaffolding at work on a shed close to the line of railway, and some porters in the service of the company carelessly shifted an engine on a turntable, so that it struck a ladder supporting the scaffold, by which means the plaintiff was thrown to the ground and injured. It was held, however, that he could not recover against the company, on the ground, that whenever an employment in the service of a railway company is such as necessarily to bring the person accepting it into contact with the traffic of the line, risk of injury from the carelessness of those managing that traffic is one of the risks necessarily and naturally incident to that employment (and see *Lovell v. Howell*, L. R., 1 C. P. D. 161).

(3) And again, in *Tunney v. Mid. R. Co.* (L. R., 1 C. P. 291), the plaintiff was employed by a railway company as a labourer, to assist in loading what is called "a pick-up train," with materials left by

platelayers and others upon the line. One of the terms of his engagement was that he should be carried by the train from Birmingham (where he resided and whence the train started) to the spot at which his work for the day was to be done, and he brought back to Birmingham at the end of each day. As he was returning to Birmingham after his day's work was done, the train in which the plaintiff was, through the negligence of the guard who had charge of it, came into collision with another train, and the plaintiff was injured. The plaintiff accordingly sued the company, but the court held, that inasmuch as the plaintiff was being carried, not as a passenger, but in the course of his contract of service, there was nothing to take the case out of the ordinary rule, which exempts a master from responsibility for an injury to a servant through the negligence of a fellow-servant when both are acting in pursuance of a common employment.

(4) So, again, in *Felltham v. England* (*L. R.*, 2 *Q. B.* 33), the defendant was a maker of locomotive engines, and the plaintiff was in his employ. An engine was being hoisted, for the purpose of being carried away, by a travelling crane moving on a tramway resting on beams of wood, supported by piers of brickwork. The piers had been recently repaired, and the brickwork was fresh. The defendant retained the general control of the establishment, but was not present; his foreman or manager directed the crane to be moved, having, just before, ordered the plaintiff to get on the engine to clean it. The plaintiff having got on to the engine, the piers gave

way, the engine fell, and the plaintiff was injured. Here it was held that the fact that the servant who was guilty of negligence was a servant of superior authority, whose lawful directions the other was bound to obey, was immaterial; and that as there was no evidence of personal negligence on the part of the defendant, and nothing to show that he had employed unskilful or incompetent persons to build the piers, he was not liable to the plaintiff.

(5) So where two railway companies, A. and B., have a joint staff of signalmen, and one of them gets injured through the negligence of the private engine driver of company A., such company will not be liable; because, although the injured man is the servant of A. and B., and the engine-driver is the servant of A. only, yet they were engaged in a common pursuit so far as company A. were concerned, although the signalman was also engaged in a further and additional pursuit on behalf of B. (see *Swainson v. N. E. R. Co.*, 25 *W. R.* 676). But where one of two companies has the user of the other's station, but not the control of it's servants employed on such station, one of whom is injured by the negligence of a servant of the company having such right of user, the rule does not apply (*Warburton v. G. W. R. Co.*, *L. R.*, 2 *Ex.* 30; and see *Turner v. G. E. R. Co.*, 33 *L. T.* 431).

Negligence of Master. RULE 15.—A master is bound to take reasonable precautions to insure his servant's safety; and if, through the absence of such reasonable pre-

cautions, or through the breach of some duty incumbent on the master, or through the personal negligence of the master, the servant is injured, the master will be responsible (*Ormond v. Holland*, *E. B. & E.* 102; *Ashwin v. Stanwir*, 30 *L. J., Q. B.* 183).

(1) Thus in *Mellors v. Shuur* (30 *L. J., Q. B.* 333), the defendants were owners of a coal mine, and the plaintiff was employed by them as a collier in the mine, and in the course of his employment it was necessary for him to descend and ascend through a shaft constructed by them; by the defendants' negligence the shaft was constructed unsafely, and was, by reason of not being sufficiently lined or cased, in an unsafe condition. By reason of this, and also by reason of no sufficient or proper apparatus having been provided by the defendants to protect their miners from the unsafe state of the shaft, a stone fell from the side of the shaft on to the plaintiff's head, and he was dangerously wounded. One of the defendants was manager of the mine, and it was worked under his personal superintendence, and the plaintiff was not aware of the state of the shaft. On this state of facts the defendants were held liable.

(2) So where a builder knowingly erects a scaffolding of unsound wood, and one of his workmen is injured in consequence, he will be liable (see *Roberts v. Smith*, 2 *H. & N.* 213).

(3) So where a master ordered a servant to take a bag of corn up a ladder which the master knew,

and the servant did not know, to be unsafe, and the ladder broke, and the servant was injured, the master was held liable (*Williams v. Clough*, 3 H. & N. 258).

Servant's knowledge of Danger. Sub-rule.—*Where a servant is injured by an instrument which he is himself using in the course of his employment, and of the nature of which he is as much aware as his master, he cannot, at all events if the evidence is consistent with his own negligence in the use of it being the real cause, recover against the master, unless there is evidence that the injury arose through the personal negligence of the master, notwithstanding that such instrument was not the safest for effecting the object in view.*

(1) Therefore where a labourer was killed through the fall of a weight, which he was raising by means of an engine to which he attached it by fastening on it a clip, and the clip had slipped off it, it was held that there was no case to go to the jury in an action by his representative against the master, although it appeared that another and safer mode of raising the weight was usual, and had been discarded by the master's orders (*Dyner v. Leach*, 26 L. J., Ex. 221; and see also *Senior v. Ward*, 1 E. & E. 385).

(2) A hoarding had been erected by the defendant, a builder, which projected too far into the street, but sufficient room was left for carts to pass; a heavy machine was placed inside the hoarding and close to it. A cart in passing struck against the hoarding, and knocked down the machine against the plaintiff, a workman in the defendant's employ. The plaintiff

had previously made some complaint of the position of the machine to his master, but voluntarily continued to work though the machine was not moved. It was here held that there was no evidence to go to the jury of the master's liability (*Assop v. Yates*, 2 H. & N. 768; *Griffiths v. Gidlow*, 3 H. & N. 648); but see *Holms v. Worthington*, 2 F. & F. 533, where Mr. Justice Willes seems to have thought that acquiescence by the workman in the reasonable expectation of the known defect being made good did not excuse the master. But this was a *nisi prius* case, and never came before the court in banco.

Volunteers. RULE 16.—If a stranger invited by a servant to assist him in his work, or who volunteers to assist him in his work, is, while giving such assistance, injured by the negligence of another servant of the same master, he is considered to be a servant *pro tempore*, and no action will lie against the master, unless he were guilty of personal negligence or breach of duty, or unless the servants were not competent persons.

The reason of this rule is obvious, for the volunteer, by aiding the servant, is simply of his own accord placing himself in the position of a servant, and that without the consent or request of the master. The latter cannot therefore be fairly called upon to recompense him for the result of his officiousness.

Thus where the servants of a railway company were turning a truck on a turntable, and a person not in the employ of the company volunteered to assist them, and, whilst so engaged, other servants of the company negligently propelled a locomotive against, and so killed the volunteer, and the servants of the company were of competent skill, and the company did not authorize the negligence, it was held that the company were not liable (*Degg v. M. R. Co.*, 1 H. & N. 773; *Potter v. Faulkner*, 1 B. & S. 800).

Exception. Where a person aids the servants of another, with such other's consent or acquiescence, not as a mere volunteer but for the purpose of expediting some business of his own, he is not considered to be in the position of a servant *pro tempore*.

Thus where the plaintiff sent a heifer by the defendants' railway to P., and on its arrival, there being only two porters to shunt the truck, the plaintiff, in order to save delay, assisted in shunting the truck, and was injured by the negligence of one of the defendants' engine-drivers, and there was evidence that the station-master assented to his aiding in the shunting, it was held that he was entitled to recover damages (*Wright v. L. & N. W. R. Co.*, L. R., 1 Q. B. D. 252).

CHAPTER IV.

OF THE LIMITATION OF ACTIONS EX DELICTO.

Reasons for Limitation. I have so far treated of the wrongs independent, or quasi independent, of contract, of which the law takes cognizance; and I have shown how the law gives a remedy whenever it holds any act to be wrongful, in accordance with the maxim "*ubi jus ibi remedium est.*"

But although there is always a remedy, yet for the sake of the peace of the kingdom a man is not allowed to enforce his remedy at his own leisure, and after a long interval, in the course of which evidence may have been entirely swept away, which if produced might prove the defendant's innocence.

For this and other reasons, various statutes have been from time to time passed, which confine the right of action within certain periods after its commencement—periods which, as they differ in different actions, will be more particularly mentioned in the course of the second part of this work. At this stage, I propose to examine only such rules as apply to the limitation of all actions of tort.

Commencement of Period. RULE 17.—When a statute limits the period within which an action is to be brought for an act done or omitted, if the cause of action is a single act, or one which amounts to a trespass, the action must be brought within the prescribed period after the actual doing of the thing complained of. But if the cause of action is not the doing of the thing, but the resulting of damage only, the period of limitation is to be computed from the time when the party sustained the injury (*Buckhouse v. Bonomi*, 9 H. L. C. 503).

The meaning of this rule is, that where the tort is the wrongful infringement of a right, then as that constitutes *per se* a tort, so the period of limitation commences to run immediately from the date of the infringement. But on the other hand, where the tort consists in the violation of a duty coupled with actual resulting damage, then as the breach of duty is not of itself a tort, so the period of limitation does not commence to run until it becomes a tort by reason of the actual damage resulting from it.

(1) Thus where A. owned houses built upon land contiguous to land of B., C., and D.; and E., being the owner of the mines under the land of all these persons, so worked the mines that the lands of B. sank, and after more than six years' interval (the period of limitation in actions on the case), their sinking caused an injury to A.'s houses: Held, that A.'s

right of action was not barred, as the tort to him was the damage caused by the working of the mines, and not the working itself (*Backhouse v. Bonomi, sup.*).

(2) In an action for wrongful conversion of goods, (which is an injury to a right) the facts were as follows:—A.'s furniture was seized under an execution by the sheriff, and eventually it was bought by A.'s friends, and left in his possession. A. enjoyed the use of it for more than six years and died. Upon A.'s death it was claimed by these friends, and adversely by the widow on the ground that the Statute of Limitations barred them from claiming it after they had allowed A. to keep it for six years: it was, however, held that the statute did not begin to run until the friends had claimed the furniture, for the tort was the wrongful conversion of the goods, which had only taken place when the widow refused to give them up (*Edwards v. Clay*, 28 *Beav.* 145).

Disability. RULE 18.—*Contra non valentem agere nulla currit præscriptio.*

(*Where a person is under disability, the statute does not run.*)

Thus where persons who would otherwise have the right to sue, are under certain disabilities, (as, for instance, coverture (in case of a woman), idiocy, or insanity,) the period of limitation does not commence to run until such disabilities have ceased (see 21 *Jac.* 1, c. 16, s. 7; 3 & 4 *Will.* 4, c. 27, s. 16).

Exception.—No actions of ejectment shall be brought, and no distress or entry be made to recover land or rent, but within forty years next after the right of action shall have accrued, notwithstanding that the person entitled to sue may be under some disability (3 & 4 Will. 4, c. 27, s. 17); and after the 1st January, 1879, the time will be further reduced to thirty years (37 & 38 Vict. c. 57, s. 5).

Disability subsequent to commencement of period no Bar. Sub-rule.—*Whenever the statute has once begun to run it continues to do so* (*Rhodes v. Smethurst*, 4 M. & W. 42; *Lafond v. Ruddock*, 13 C. B. 819).

Therefore where the plaintiff is under no disability at the time the right of action accrued to him, but subsequently becomes under disability, and continues so until the expiration of the period of limitation, his right of action is barred; for the statute having once begun to run continues to do so.

Continuing Torts. RULE 19.—Where the tort is continuing, the right of action is also continuing (*Whitehouse v. Fellowes*, 30 L. J., C. P. 305).

Thus where an action is brought against a person for false imprisonment, every continuance of the imprisonment *de die in diem* is a new imprisonment, and therefore the period of limitation commences to run from the last and not the first day of the imprisonment (*Hardy v. Ryle*, 9 B. & C. 608).

CHAPTER V.

OF THE MEASURE OF DAMAGES IN ACTIONS OF TORT.

THE principles which govern the measure of damages in actions of tort are very loose, and, indeed, as Mr. Mayne, in his excellent treatise, has pointed out, there are many cases of tort in which no measure can be given. It will be at once apparent, however, that, putting aside circumstances of aggravation or mitigation, the compensation to be awarded in respect of an injury to property is capable of being far more accurately calculated than in respect of injury to person or reputation; and, therefore, to some extent the principles of law are different in these two classes of cases, as will be seen from the following rules.

Damages for Personal Injury. RULE 20.
—There is no fixed rule for estimating damages in cases of injury to the person, reputation, or feelings, but the damages must be excessive and outrageous to warrant a new trial (*Huckle v. Money*, 2 Wils. 205; *Corkery v. Hickson, Jr. R.*, 10 U. L. 175).

(1) *False Imprisonment.*—Thus where some working men were unlawfully imprisoned for six hours only, being in the meantime well fed and cared for, and the jury nevertheless awarded 300*l.* to each

of them, the court refused to set the verdict aside, on the ground that it seemed to them probable that the jury considered the importance of the right of personal liberty rather than the position of the plaintiffs.

(2) *Seduction*. And so in actions for seduction, "although in point of form the action only purports to give a recompense for loss of service, we cannot shut our eyes to the fact that it is an action brought by a parent for an injury to her child, and the jury may take into their consideration all that she can feel from the nature of the loss. They may look upon her as a parent losing the comfort as well as the service of her daughter, in whose virtue she can feel no consolation; and as the parent of other children whose morals may be corrupted by her example" (per Ld. Eldon, *Bedford v. M'Koul*, 3 *Esp.* 120).

(3) *Assault*. So in actions for assault and battery, the court will seldom interfere; and the jury may take the circumstances into consideration, and aggravate or mitigate the damages accordingly.

Thus, to beat a man publicly is a greater insult and injury than to do so in private, and is accordingly ground for aggravation of damages (*Tullidge v. Wade*, 8 *Wils.* 18).

(4) *Defamation*. So for defamation, the damages are almost wholly in the discretion of the jury (*Kelly v. Sherlock*, *L. R.*, 1 *Q. B.* 686), and the court will seldom interfere with their verdict.

Exceptions.—The court will interfere with the ver-

diet, if it appear that the jury assessed the damages under a mistake or ill-feeling, or if they give the plaintiff more than he is entitled to, according to his own showing, or where the smallness of the amount shows that the jury have made a compromise, and, instead of deciding the issues, have agreed to find for the plaintiff for nominal damages only (*Hambleton v. Vere*, 2 Wms. Saund. 170; *Britton v. S. W. R. Co.*, 27 L. J., Ex. 355; *Fulry v. Stanford*, L. R., 10 Q. B. 54).

Damages for Injuries to Property. It is extremely difficult to lay down any rules with regard even to this branch of the subject, where it might be considered that some principles of estimation would apply, for the jury are allowed a much greater latitude than in questions of contract. However it may be laid down as generally true that—

RULE 21.—The damages in respect of injuries to property are to be estimated upon the basis of being compensatory for the deterioration in value caused by the wrongful act of the defendant, and for all natural and necessary expenses incurred by reason of such act.

(1) *Injury to Horse.* Thus in the case of injury to a horse through the defendant's negligence; it has been held, that the measure of damages is the keep of the horse at the farrier's, the amount of the

farrier's bill, and the difference between the prior and subsequent value of the horse (*Jones v. Boyce*, 1 Stark. 493; and see *Wilson v. Newport Dock Co.*, L. R., 1 Ex. 187).

(2) *Conversion*. So in the conversion of chattels, the full market value of the chattel at the date of the conversion is, *in the absence of special damage*, the true measure. Thus, where the plaintiff purchased champagne, lying at the defendant's wharf, at fourteen shillings per dozen, and resold it at twenty-four shillings to the captain of a ship about to leave England, and the defendants wrongfully refused to deliver up the wine, and converted it to their own use, it was held, in an action of trover, that although the defendants had no knowledge of the sale, or of the purposes for which the plaintiff required delivery of the champagne, yet the plaintiff was entitled as damages to the price at which he had sold it (*France v. Gaudet*, L. R., 6 Q. B. 199).

(3) *Trespass*. So where coal has been taken by working into the mine of an adjoining owner, the trespasser will be treated as the purchaser at the pit's mouth, and must pay the market value of the coal at the pit's mouth, less the actual disbursements (not including any profit or trade allowances) for severing and bringing it to bank, so as to place the owner in the same position as if he had himself severed and raised the coal (*In re United Merthyr Coll. Co.*, L. R., 15 Eq. 46).

(4) *Infringement of Patent*. And so the patentee

of an invention applicable to part of a machine, who is himself a manufacturer, but who has been in the habit of licensing the use of his invention by other manufacturers on payment of a fixed royalty for each machine, can only claim from an infringer of his patent the ordinary royalty, and cannot claim in addition a manufacturing profit (*Penn v. Jack*, *L. R.*, 5 *Eq.* 81).

Consequential Damages. RULE 22.—

Where any special damages have naturally, and in sequence, resulted from the tort, they may be recovered.

The difficulty in cases under this rule, is to determine what damages are the *natural* result, and what are too remote.

(1) *Loss of Business.* If, through the wilful or negligent conduct of another, one should receive corporal injury, whereby he is partially or totally prevented from attending to his business, the pecuniary loss suffered in consequence may be recovered. The most usual instances of this are to be found in actions against railway companies.

(2) *Medical Expenses.* So, the medical expenses incurred may be recovered if they form a legal debt owing from the plaintiff to the physician, but not otherwise (*Dixon v. Bell*, 1 *Stark.* 289; and see *Spark v. Heslop*, 28 *L. J.*, *Q. B.* 197).

(3) *Loss of Property.* The plaintiff was travelling

with other passengers in the carriage of a railway company, and on the tickets being collected, there was found to be a ticket short, and the plaintiff was wrongly charged by the collector with being the defaulter, and on his refusing to pay, was removed by the officers of the company, without unnecessary violence; it was held, in an action for assault, that the loss of a pair of race-glasses, which the plaintiff had left behind him in the carriage when he was removed, and which were not proved to have come into the possession of any of the company's servants, was not such a natural consequence of the assault as to be recoverable (*Glover v. L. & S. W. R. Co.*, *L. R.*, 3 *Q. B.* 25; and see also as to remoteness *Sanders v. Stuart*, *L. R.*, 1 *C. P. D.* 326).

(4) *Lord Campbell's Act*. The damages awarded under Lord Campbell's Act to the relatives of persons killed through the default of the defendant should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life of the deceased (*Franklin v. S. E. R. Co.*, 3 *H. & N.* 211).

The jury cannot, in such cases, take into consideration the grief, mourning and funeral expenses to which the survivors were put. And this seems reasonable, for in the ordinary course of nature the deceased would have died sooner or later, and the grief, mourning and funeral expenses would have had to be borne then, if not at the time they were borne (*Blake v. Mid. R. Co.*, 21 *L. J.*, *Q. B.* 233; *Dalton v. S. E. R. Co.*, 27 *L. J.*, *C. P.* 227).

(5) *Injury to Trade.* So, in estimating the damages in an action for libelling a tradesman, the jury should take into consideration the prospective injury which will probably happen to his trade in consequence of the defamation (*Gregory v. Williams*, 1 C. & K. 568).

(6) *Hiring Substitute.* In cases of wrongful conversion, if the owner of the chattel has been obliged to hire another in its place, the expense to which he has been put is recoverable (*Ad.* 403).

(7) *Trespass.* Where the defendant was in charge of the plaintiff's house, and having one day lost the key, he effected an entrance through a window by means of a ladder, and showed some strangers through the house, it was held to be a trespass, for he was only authorized to enter in the ordinary way; and therefore, when some short time afterwards the house was entered through the same window by thieves following his example, and many things stolen, it was held to be the consequence of the defendant's wrongful entry, and that he was liable for the loss of the things stolen (*Ancaster v. Milling*, 2 D. & R. 714). The writer, however, entertains much doubt whether this case would be followed in the present day, as the alleged damage cannot (with great submission to the learned judges who decided the case) be said to have been the natural result of the trespass.

(8) *Infection.* A cattle-dealer sold to the plaintiff a cow, fraudulently representing that it was free

from infectious disease when he knew that it was not, and the plaintiff having placed the cow with five others, they caught the disease and died; it was held that the plaintiff was entitled to recover as damages the value of all the cows, as their death was the natural consequence of his acting on the faith of the defendant's representation (*Mullet v. Mason*, *L. R.*, 1 *C. P.* 559).

(9) In *Collins v. The Middle Level Commissioners* (*L. R.*, 5 *C. P.* 279) the facts were as follows: By a drainage act the Commissioners were to construct a cut with proper walls, gates and sluices to keep out the waters of a tidal river, and also a culvert under the cut to carry the drainage from the lands on the east to the west of the cut, *and to keep the same at all times open*. In consequence of the negligent construction of the gates and sluices, the waters of the river flowed into the cut, and bursting its western bank flooded the adjoining lands. The plaintiff and other owners of lands on the east side of the cut closed the lower end of the culvert, which prevented the waters overflowing their lands to any considerable extent; but the occupiers of the lands on the west side, believing that the stoppage of the culvert would be injurious to their lands, re-opened it, and so let the waters through on to the plaintiff's lands to a much greater extent. It was held, that the Commissioners were liable for the whole of the damage, as the natural result of their negligence.

(10) *Having been obliged to pay Damages to a Third Party*. So, where a landlord, upon his tenant

giving notice to quit, entered into a contract with a new tenant. Upon the expiration of the notice, the first tenant refused to quit, and the new tenant not being able to enter in consequence brought an action against the landlord for breach of contract. It was held, that the landlord might recover in an action against the tenant the costs and damages to which he had been put in the action against him; for they were the natural and ordinary result of the defendant's wrong (*Bramley v. Chesterton*, 2 C. B., N. S. 605; and see *Tindal v. Bell*, 11 M. & W. 228).

Certain prospective Damages recoverable.

Sub-rule.—*The jury should take into their consideration, in assessing the damages, the probable future injury that will result to the plaintiff from the act of the defendant; for the damages when given are taken to include all the hurtful consequences arising out of the wrongful act, unknown as well as known* (*Id.* 586—991; and see *Lamb v. Walker*, L. R., 3 Q. B. D. 389).

Best, C. J. (in *Richardson v. Mellish*, 2 Bing. 240), says, “When the cause of action is complete, when the whole thing has but one neck, and that neck has been cut off by one act of the defendant, it would be mischievous to say—it would be increasing litigation to say—‘you shall not have all you are entitled to in your first action, but you shall be driven to a second, third, or fourth for the recovery of your damages.’” A corollary to this sub-rule is that several actions cannot be brought in respect of the same injury. Therefore where a bodily injury

at first appeared slight, and small damages were awarded; but subsequently it became a very serious injury: it was held that another action would not lie, for the action having been once brought, all damages arising out of the wrong were satisfied by the award in the action (*Fetter v. Beale*, 1 *Ld. Raym.* 339—692).

Continuing Torts. *Exception.*—But if the tort be a continuing tort, the principle does not apply; for here a fresh cause of action arises *de die in diem*. Thus in a continuing trespass, or nuisance, if the defendant does not cease to commit the trespass, or nuisance, after the first action, he may be sued until he does.

Aggravation and Mitigation. RULE 23.
—The jury may look into all the circumstances, and at the conduct of both parties, and see where the blame is, and what ought to be the compensation according to the way the parties have conducted themselves (*Davis v. N. W. R. Co.*, 7 *W. R.* 105).

(1) *Seduction under Guise of Courtship.* In seduction, if the defendant have committed the offence under the guise of honourable courtship, that is ground for aggravating the damages; not, however, on account of the breach of contract, for that is a separate offence, and against a different person.

"The jury did right in a case where it was proved that the seducer had made his advances under the guise of matrimony, in giving liberal damages; and if the party seduced brings an action for breach of promise of marriage, so much the better. If much greater damages had been given, we should not have been dissatisfied therewith, the plaintiff having received this insult in his own house, where he had civilly treated the defendant, and permitted him to pay his addresses to his daughter" (Wilmot, C. J., in *Tullidge v. Wade*, 3 Wils. 18).

(2) On the other hand, the previous loose or immoral character of the party seduced, is ground for mitigation. The using of immodest language for instance, or submitting herself to the defendant under circumstances of extreme indelicacy (*Id.* 909).

(3) *Plea of Truth in Defamation.* In actions for defamation, a plea of truth is matter of aggravation unless proved, and may be taken into consideration by the jury in estimating the damages (*Warwick v. Foulkes*, 12 M. & W. 508).

(4) *Plaintiff's Bad Character in Defamation.* Evidence of the plaintiff's *general bad character* has been allowed in mitigation of damages in cases of slander (*Jones v. Stercus*, 11 Pr. 265); but it is considered very doubtful whether this case would be followed at the present day.

(5) *Plaintiff's irritating Conduct in Defamation.* In *Kelly v. Sharlock* (L. R., 1 Q. B. 686), the action was brought in respect of a series of gross

and offensive libels contained in the defendant's newspaper. It appeared, however, that the first libel originated in the plaintiff having preached, and published in the local papers, two sermons reflecting on the magistrates for having appointed a Roman Catholic chaplain to the borough gaol, and on the town council for having elected a Jew as their mayor, and the plaintiff had, soon after the libels had commenced, alluded, in a letter to another paper, to the defendant's paper as "the dregs of provincial journalism," and he had also delivered from the pulpit, and published, a statement to the effect that some of his opponents had been guilty of subornation of perjury in relation to a charge of assault of which the plaintiff had been convicted. The jury having returned a verdict for a farthing damages, the court refused to interfere with the verdict on the ground of its inadequacy, intimating that although on account of the grossness and repetition of the libels the verdict might well have been for larger damages, yet it was a question for the jury, taking the plaintiff's own conduct into consideration, what amount of damages he was entitled to, and that the court ought not to interfere.

(6) *Imprisonment on False Charge of Felony.* In false imprisonment and assault, if the imprisonment has been upon a false charge of felony, where no felony has been committed, or no reasonable ground for suspecting the plaintiff, this will be matter of aggravation (*Ad. 585*).

(7) *Battery in consequence of Insult.* But if an

assault and battery have taken place in consequence of insulting language on the part of the plaintiff, this will be ground for mitigating the damages (*Thomas v. Powell*, 7 C. & P. 807).

(8) *Insolent Trespass.* Where a person trespassed upon the plaintiff's land, and defied him, and was otherwise very insolent, and the jury returned a verdict for 500*l.* damages, the court refused to interfere, Chief Justice Gibbs saying, "Suppose a gentleman has a paved walk before his window, and a man intrudes, and walks up and down before the window, and remains there after he has been told to go away, and looks in while the owner is at dinner, is the trespasser to be permitted to say, 'Here is a halfpenny for you, which is the full extent of all the mischief I have done'? Would that be a compensation?" (in *Merest v. Harvey*, 5 Taunt. 441).

(9) *Wrongful Seizure.* And so where the defendant wrongfully seizes another's chattels, and exercises dominion over them; substantial damages will be awarded for the invasion of the right of ownership (*Baylis v. Fisher*, 7 Bing. 153).

(10) *Causing Suspicion of Insolvency.* And where the defendant took the plaintiff's goods under a false claim, whereby certain persons concluded that the plaintiff was insolvent, and that the goods had been seized under an execution, it was held that exemplary damages might be given (*Brewer v. Dew*, 11 M. & W. 629).

(11) *Return of Goods.* But where the defen-

dant has returned the goods in the course of the action, and they have been received unconditionally by the plaintiff, merely nominal damages will be recoverable; unless the goods have been injured, or some special damage has been suffered (*Ad. 363*).

Where Plaintiff is only Bailee. RULE 24.
—Where the plaintiff is merely the possessory, but not the real owner, he may, as against a third party, recover the entire value of the property; but as against the real owner, only the value of his limited interest (*Heydon and Smith's case*, 13 Co. 68).

And it seems therefore, that a *jus tertii* is not provable in reduction of damages, unless indeed the actual possession of the whole of the property was not in the plaintiff; as where the owner of one sixteenth of a ship attempted to get damages for the whole value of it, he was not allowed to do so (*Dockwray v. Dickenson*, *Skin.* 640).

Presumption of Damage. RULE 25.—If a person who has wrongfully converted property, refuses to produce it, it shall be pre-

sumed as against him to be of the best description (*Armory v. Delamirie*, 1 Sm. L. Ca. 315).

(1) Thus in the above case, where a jeweller who had wrongfully converted a jewel which had been shown to him, and had returned the socket only, refused to produce it in order that its value might be ascertained, the jury were directed to assess the damages upon the presumption that the jewel was of the finest water, and of a size to fit the socket; for *Omnia præsumuntur contra spoliatores*.

(2) So where a diamond necklace was taken away, and part of it traced to the defendant, it was held that the jury might infer that the whole thing had come into his hands (*Mortimer v. Crabbe*, 12 L. J., C. P. 166).

Damages in Actions of Tort founded upon Contract. RULE 26.—The damages in actions of tort founded upon contract, must be estimated in the same way as they are estimated in breach of contract; for a man cannot, by merely changing the form of his action, put himself in a better position (see *Chinery v. Viall*, 5 H. & N. 295; *Johnson v. Stear*, 33 L. J., C. P. 130).

Therefore since in breaches of contract, the damages are limited to injuries which may reasonably be presumed to have been foreseen by both parties at the time of contracting, a man cannot sue for extraordinary, though consequential, damages (*Hadley v. Baxendale*, 9 *Ex.* 354).

CHAPTER VI.

OF INJUNCTIONS TO PREVENT THE CONTINUANCE OF
TORTS.

Definition. An injunction is a writ remedial, issuing by order of the Court of Appeal, or the High Court of Justice, or any division or judge of either of them, restraining the commission or continuance of some act of the defendant.

Interlocutory or perpetual. Injunctions are either interlocutory or perpetual. An interlocutory injunction is a temporary injunction granted summarily on a motion founded on affidavit, and before the facts in issue have been formally tried and determined. A perpetual injunction is one which is granted after the facts in issue have been tried and determined, and is given by way of final relief.

Injuries remediable by Injunction. RULE 27.—Wherever a legal right in property exists, a violation of that right will be prohibited in all cases where the injury is such as is not susceptible of being adequately compensated by damages, or at least not without the necessity of a multiplicity of

actions for that purpose. But an injunction will not be granted where the injury is trivial in amount, or where the court in its discretion considers that damages should alone be given (see 21 & 22 Vict. c. 27).

(1) Thus where substantial damages would be, or have been, recovered for injury done to land or the herbage thereon by smoke or noxious fumes, an injunction will be granted to prevent the continuance of the nuisance, for otherwise the plaintiff would have to bring continual actions (*Tipping v. St. Helens' Smelting Co.*, *L. R.*, 1 Ch. 66).

(2) And so where a railway company for the construction of their works erected a mortar mill on part of their land close to the plaintiff's place of business, so as to cause great injury and annoyance to him by the noise and vibration, it was held that he was entitled to an injunction to restrain the company from continuing the annoyance (*Fenrick v. East London R. Co.*, *L. R.*, 20 Eq. 544).

(3) So where one has gained a right to the free access of light to his house, and buildings are erected which cause a substantial privation of light sufficient to render the occupation of the house uncomfortable, or to prevent the plaintiff from carrying on his accustomed business on the premises, an injunction will be granted *if the deprivation of light is such as would support a claim for substantial damages*; for, as was said by Sir W. Page Wood, V.-C., in *Dent v. Auction Mart Co.* (*L. R.*, 2 Eq. 246), "Having arrived at this conclusion with regard to the remedy

which would exist at law, we are met with the further difficulty, that in equity we must not always give relief (it was so laid down by Lord Eldon and Lord Westbury) where there would be relief given at law. Having considered it in every possible way, I cannot myself arrive at any other conclusion than this, that where substantial damages would be given at law, as distinguished from some small sum of 5*l.*, 10*l.*, or 20*l.*, this court will interpose, and on this ground, that it cannot be contended that those who are minded to erect a building that will inflict an injury upon their neighbour, have a right to purchase him out, without an act of parliament for that purpose." Sir G. Jessel, M.R., commenting upon the above passage in *Aynsley v. Glover* (*L. R.*, 18 *Eq.* 552), says: "It seems to me that that gives a reasonable rule, whatever the law may have been in former times. As I understand it, the rule now is,—and I shall so decide in future, unless in the meantime the Appeal Court shall decide differently,—that wherever an action can be maintained at law, and really substantial damages, or perhaps I should say considerable damages (for some people may say that 20*l.* is substantial damages), can be recovered at law, there the injunction ought to follow in equity, generally, not universally, because I have something to add upon that subject." His lordship then, commenting upon the power given to him of awarding damages in substitution for an injunction, proceeded as follows: "It must be for the court to decide, upon consideration, to what cases the enactment (21 & 22 Vict. c. 27) should be held to apply. In the case of

The Carriers' Company v. Corbet (2 Dr. & Sm. 355), we have an instance in which a judge has said that the act ought to apply in some cases. I had one before me, in which, there being comparatively a very trifling injury, although sufficient perhaps to maintain an injunction, comparing that with the injury inflicted upon the defendant, I thought, under the special circumstances, damages should be given instead of an injunction. I am not now going, and I do not suppose that any judge will ever do so, to lay down a rule which, so to say, will tie the hands of the court. The discretion being a reasonable discretion, should, I think, be reasonably exercised, and it must depend upon the special circumstances of each case whether it ought to be exercised. The power has been conferred, no doubt usefully, to avoid the oppression which is sometimes practised in these suits by a plaintiff who is enabled—I do not like to use the word ‘extort,’ but—to obtain a very large sum of money from a defendant, merely because the plaintiff has a legal right to an injunction. I think the enactment was meant, in some sense or another, to prevent that course being successfully adopted. But there may be some other special cases to which the act may be safely applied, and I do not intend to lay down any rule upon the subject. If I had found by the evidence that there was in this case a clear instance of very slight damage to the plaintiffs—that is, some 20%, or 30%, or 40%, but still very slight—I should be disposed to hold that that was a case in which this court would decline to interfere by injunction, having regard to

the new power conferred upon me by Lord Cairns' Act to substitute damages for it" (and see also *Smith v. Smith*, *L. R.*, 20 *Eq.* 505).

(4) Where there is a *mere trespass*, the court will not interfere, because the proper remedy is by an action for damages, or an action of ejectment; but if in addition to the trespass, the trespasser is actually working the destruction of the estate, as by cutting down the timber or working a mine on it, an injunction will be granted (see *Drewry on Injunctions*, 184 *et seq.*; and *Joyce on Injunctions*, 131).

(5) Where the sewage of a town was carried from a brook which, passing through a man's land, fed a lake also on such land, and the sewage thus discharged had for several years fouled the water of the lake, so that from being pure drinking water it gradually became quite unfit for drinking, an injunction was granted (*Goldsmid v. Tunbridge Wells Improvement Co.*, *L. R.*, 1 *Eq.* 161).

(6) Again, deprivation of lateral or subjacent support, in cases where a jury would give considerable damages, is sufficient ground for an injunction.

(7) So, infringements of trade marks, copyright, and patent right, are peculiarly remediable by injunction; for not only are they continuing wrongs to proprietary rights, but damages never could properly compensate the persons whose rights are invaded.

(8) On the other hand, there is no injunction to restrain the publication of a libel (*Gee v. Pritchard*, 2 *Scr.* 402; *Clark v. Freeman*, 11 *B.* 112), for it does not concern property, and property is the subject-

matter of the jurisdiction. It is, however, apprehended that slander of title might be restrained.

(9) The courts have held, that the writer of private letters has such a qualified property in them as will entitle him to an injunction to restrain their publication by the party written to, or his assignees (*Drew. Inj.* 208; *Pope v. Curl*, 2 *At.* 342). And that the party written to has such a qualified right of property in them as will entitle him, or his personal representatives, to restrain their publication by a stranger, unless such right is displaced by some personal equity, or by grounds of public policy (*Drew. Inj.* 309; *Granard v. Dunkin*, 1 *B. & Beat.* 207; *Percival v. Phipps*, 2 *V. & B.* 19).

Threatened Injury. RULE 28.—The court will not in general interfere until an actual tort has been committed; but it may, by virtue of its jurisdiction to restrain acts which when completed will result in a ground of action, interfere before any actual tort has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance (*Kerr, Inj.* 339).

(1) So where a man threatens, or begins to do, or insists upon his right to do, certain acts, the court will interfere before any actual damage or infringement of any right has actually taken place, if the circumstances are such as to enable it to form an opinion as to the illegality of the acts complained of,

and the irreparable injury which will ensue (*Palmer v. Paul*, 2 L. J., Ch. 154; *Elliott v. N. E. R. Co.*, 10 H. L. Cas. 333). But if the injury is only problematical, according as other circumstances may or may not arise, or if there is no pressing need for an injunction, the court will not grant it until a tort has actually been committed (*Kerr*, Inj. 339).

Public Convenience does not justify the Continuance of a Tort. RULE 29.—It is no ground for refusing an injunction that it will, if granted, do an injury to the public, except where the legislature has *expressly* authorized the act complained of.

(1) Thus in the case of *The Attorney-General v. Birmingham Corporation* (4 K. & J. 528), where the defendants had poured their sewage into a river, and so rendered its water unfit for drinking and incapable of supporting fish, it was held that the legislature not having given them express powers to send their sewage into the river, they could not do so on the ground that the population of Birmingham would be injured if they were restrained from carrying on their operations (see also *Spokes v. The Banbury Board of Health*, L. R., 1 Eq. 42; and *Goldsmid v. Tanbridge Wells Improvement Co.*, *sup.*).

Mandatory Injunctions. RULE 30.—Where an injunction is asked, not merely

prohibiting an act, but ordering some act to be done, it in general requires a stronger case to be made out, than where a mere prohibition is asked for, especially where the injunction is interlocutory (*Deere v. Guest*, 1 *M. & C.* 516; *Durrell v. Pritchard*, *L. R.*, 1 *Ch.* 250; *Clark v. Clark*, *L. R.*, 1 *Ch.* 16).

(1) Thus where a man has actually built a house which interferes with his neighbour's ancient lights, the court will not order him to take it down, except in cases in which extreme, or at all events very serious damage, would ensue if its interference were withheld.

(2) And so where an injunction was asked, ordering the defendants to pull down some new buildings, on two grounds, namely, 1st, that a right of way was obstructed by the new buildings; and, 2ndly, that the new buildings obstructed the light and air: it was held that no injunction ought to be granted, because, as was said by the Lord Justice Turner, "as to none of these grounds does it seem to me that there is any such extreme or serious damage as could justify the mandatory injunction which is asked. As to the first ground, the right of way is not wholly stopped. The question is one merely of the comparative convenience of the right of way as it formerly existed, and as it now exists. As to the second ground, I think that the diminution of light and air to the plaintiff's houses is not such as would warrant us in granting the relief which is asked" (*Durrell v. Pritchard*, *sup.*).

Delay. RULE 31.—A person who has not shown due diligence in applying to the court for relief, will in general be debarred from obtaining an interlocutory injunction; but he will not be thereby debarred from obtaining an injunction at the hearing of the cause, unless his delay has been of such long duration as wholly to have deprived him of the right which he originally had (per Lord Langdale in *Gordon v. Cheltenham R. Co.*, 5 B. 233).

PART II.

RULES RELATING TO PARTICULAR TORTS.

CHAPTER I.

OF DEFAMATION.

Oral or Written. Defamation may be either oral or written. In the former case it is called slander,—in the latter, libel.

Definitions. Libel, in its legal sense, may be defined as a false and malicious defamation of character expressed in writing, print, picture, or the like, tending to injure the reputation of another, and whereby that other is exposed to public ridicule, hatred, or contempt (Broom, 731).

The definition of slander is similar to that of libel, with the exception that the defamatory matter must be spoken and not written.

RULE 1.—In order to sustain an action for defamation, one of the two following state of facts must exist, namely:—

- (a) A false and disparaging statement expressed in writing, or print, published maliciously by the defendant of the plaintiff;
- (b) A false and disparaging verbal statement spoken and published mali-

ciously by the defendant of the plaintiff, whereby (except in certain cases hereinafter mentioned) actual damage has been caused to the plaintiff.

I.—Falsity. The words must be false, for truth is a good plea to an action for defamation (*Watkin v. Hall*, *L. R.*, 3 *Q. B.* 400; *Macpherson v. Daniels*, 10 *B. & C.* 272; *Gourley v. Plimsoll*, *L. R.*, 8 *C. P.* 362).

In making it necessary to the success of an action for defamation that the defamatory statement should be false, our law follows the civil law, in which it was a principle that “*eum qui nocentium infamat, non est æquum et bonum ob eam rem condemnari; delicta enim nocentium, nota esse oportet et expedit.*”

II.—Disparagement. The words, writing, or picture, must be disparaging to be actionable (see *Sheaban v. Ahearne*, *Ir. Rep.*, 9 *C. L.* 412).

Sub-rule 1.—*Disparaging words are such as impute conduct or qualities tending to disparage or degrade the plaintiff* (*Digby v. Thompson*, 4 *B. & A.* 821); or to expose him to contempt, ridicule, or public hatred, or to prejudice his private character, or credit (*Gray v. Gray*, 34 *L. J.*, *C. P.* 45); or to cause him to be feared or avoided (*Ianson v. Stuart*, 1 *T. R.* 748; *Walker v. Brogden*, 19 *C. B.*, *N. S.* 165).

Thus describing another as an infernal villain is a disparaging statement sufficient to maintain an

action (*Bell v. Stone*, 1 B. & P. 331); and so is an imputation of insanity (*Morgan v. Lingden*, 8 L. T., N. S. 800); or insolvency, or impecuniousness (*Met. Saloon Omnibus Co. v. Harkins*, 28 L. J., Ex. 201; *Eaton v. Johns*, 1 Dowl., N. S. 612); or of gross misconduct (*Clement v. Chiris*, 9 B. & C. 176); or of cheating at dice (*Greville v. Chapman*, 5 Q. B. 744; or of ingratitude (*Coc v. Lee*, L. R., 4 Ex. 284).

So reflections on the professional and commercial conduct of another are defamatory; as to say of a physician, that he is a quack; and even to advertise pills as prepared by him (contrary to the fact) would probably be a libel (*Clark v. Freeman*, 11 Bear. 117). So, also, calling a newspaper proprietor "a libellous journalist," is defamatory (*Wakeley v. Cooke*, 4 Ex. 518).

The imputation must however in such cases be a charge of professional *misconduct*, and not a mere imputation of unworthy habits, or bad taste (*Clay v. Roberts*, 9 Jur., N. S. 580).

III.—**Construction of Words.** Sub-rule 2. — *Words uttered must be construed in the sense which hearers of common and reasonable understanding would ascribe to them, even though particular individuals, better informed on the matter alluded to, might form a different judgment on the subject* (per Pollock, C. B., in *Hankinson v. Bilby*, 16 M. & W. 442).

Thus words, which in themselves are innocent and inoffensive, may become libellous or slanderous when used in an ironical manner, and in such a way that no reasonable person could be expected to construe them in their ordinary sense.

IV.—Publication. Both written and spoken defamation must have been published in order to constitute an actionable wrong.

Sub-rule 3.—*The making known the libel or slander to any person other than the object of such libel or slander is publication in its legal sense.*

“Though, in common parlance, that word may be confined in its meaning to making the contents known to the public, yet its meaning is not so limited in law. The making of it known to an individual only is indisputably in law a publishing” (*Rex v. Burdett*, 4 B. & Ald. 143).

In civil actions it is immaterial—so far as the right to recover *some* damages is concerned—whether the libel was published intentionally, or only by accident, or through the negligence of the defendant (*Fox v. Broderick*, 14 Ir. C. L. Rep. 453; see also *Harrison v. Bush*, 5 E. & B. 344).

It is for the jury to find whether the facts, on which it is endeavoured to prove publication, are true; but for the court to decide whether those facts constitute a publication.

V.—Malice. Express or implied malice must exist in actions of defamation, but generally it is implied.

Malice, in the legal acceptation of the word, is not confined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another (per Campbell, C. J., 9 Cl. & F. 321).

Sub-rule 4.—*In an action for defamation, the existence of express malice is only a matter for inquiry, when the words complained of were spoken on a justifi-*

able occasion (*Hooper v. Gruscott*, 2 Bing. N. C. 457; *Watkin v. Hall*, *supra*; *Speill v. Munde*, L. R., 3 Ex. 232).

The meaning of this is, that where a statement, writing, or picture, is false and defamatory, and was not published upon such a lawful occasion as to rebut the presumption of malice, the law will conclude it to be malicious (*Baylis v. Lawrence*, 11 A. & E. 920).

There are, however, cases in which it is necessary to show express malice on the part of the defendant, that is to say:—(1) Where the communication is said to be privileged (and with these I shall have to deal at greater length subsequently); and (2) in slander of title, that is to say, where the slander consists in falsely impeaching a man's right to land or goods (*Wren v. Weild*, L. R., 4 Q. B. 730).

VI.—Damages. In actions of slander (save in the cases hereinafter mentioned), but not of libel, it is necessary to prove damages, and unless the plaintiff can do so he cannot succeed.

Sub-rule 5.—*In oral defamation, as in other torts, where damages must be proved, the loss complained of must be such as "might fairly and reasonably have been anticipated and feared would follow from the speaking of the words"* (*Lynch v. Knight*, 9 H. of L. C. 517).

The rule laid down by Lord Ellenborough on this point was, that the special damage must be the legal and natural consequence of the words spoken, and, consequently, that it is not sufficient to sustain an action of slander to prove a mere wrongful act of a third party induced by the slander, such as that he had

dismissed the plaintiff from his employment, before the end of the term for which they had contracted (*Vicars v. Wilcocks*, 2 Sm. L. C. 534). The decision in this case seems to have been arrived at on two grounds; (1) that the plaintiff having been unlawfully dismissed had a right of action against his master, and that, therefore, he ought not to be allowed a second action against the slanderer, lest he should recover double damages; and (2) that the act complained of being a wrongful act could not possibly be considered the *legal* and natural consequence of the defamation. The first of these dicta has now ceased to be law, and the cases of *Green v. Button* (2 C. M. & Ry. 171), and, more particularly, *Lumley v. Gye* (2 E. & B. 216) have completely overruled such an objection. In respect to the rule that the damages must be the legal and natural consequence of the slander, the judgment of Lord Wensleydale, in *Lynch v. Knight* (*sup.*), throws considerable doubt thereon, and should be carefully read. His lordship thus proceeds:—"I am much influenced by the able reasoning of Mr. Justice Christian (one of the judges in the court below). I strongly incline to agree with him, that to make the words actionable by reason of special damage, the consequence must be such as, taking human nature as it is, with its infirmities, and having regard to the relationship of the parties concerned, might fairly and reasonably have been anticipated and feared would follow from the speaking of the words, not what would reasonably follow, as we might think ought to follow. . . . In the case of *Vicars v. Wilcocks*, I must say that

the rules laid down by Lord Ellenborough are too restrictive. That which I have taken from Mr. Justice Christian seems to me, I own, correct. I cannot agree that the special damage must be the natural and legal consequence of the words, if true. Lord Ellenborough puts an absurd case, that a plaintiff could recover damages for being thrown into a horse-pond as a consequence of words spoken; but, I own, I can conceive that, when the public mind was greatly excited on the subject of some base and disgraceful crime, an accusation of it to an assembled mob might, under particular circumstances, very naturally produce that result, and a compensation might be given for an act occurring as a consequence of an accusation of that crime."

Examples of Actual Damage.—(1) Words were spoken imputing unchastity to a woman, and by reason thereof she was excluded from a private society and congregation of a sect of Protestant Dissenters, of which she had been a member, and was prevented from obtaining a certificate, without which she could not become a member of any other society of the same nature: Held, that such a result was not such special damage as would render the words actionable (*Roberts v. Roberts*, 33 L. J., Q. B. 249).

(2) Action by husband and wife for slander, imputing incontinency to the wife, alleging that, by reason thereof the wife became ill and unable to attend to her necessary affairs and business, and that the husband was put to expense in endeavouring to cure her: Held, that the declaration showed no

cause of action (*Allsopp v. Allsopp*, 5 *Hurls. & Norm.* 534).

(3) Where the wife, in consequence of words imputing want of chastity to her, ceased to receive the hospitality of divers friends, and especially of her husband, it was held that such a loss was the reasonable and natural consequence of such slander (*Davies v. Solomon*, *L. R.*, 7 *Q. B.* 112).

There is a custom in the City of London courts enabling a woman whose chastity has been slandered, to maintain an action, though she can prove no special damage (3 *Steph. Com.* 379).

Imputation of Crime, Unfitness for Society and Misconduct in Business. There are certain exceptions to the rule that verbal slander must have caused actual damage in order to be actionable. In fact some slanders import such defamation as must be naturally prejudicial, and therefore in such cases the law presumes a *damnum*.

Exception (1). A false oral imputation made against another, of the commission of an indictable offence, is a sufficient *damnum* of itself (*Roucliff v. Edmonds*, 7 *M. & W.* 12).

Thus the words "You are a rogue, and I will prove you a rogue, for you forged my name," are actionable (*Jones v. Herne*, 2 *Wils.* 89). And it is immaterial that the charge was made at a time when it could not cause any criminal proceedings to be instituted. Thus the words "You are guilty" [innuendo of the

murder of D.] are, after the verdict of not guilty, a sufficient charge of murder to support an action (*Peake v. Oldham*, 2 *W. Bl.* 960). But if words charging a crime are accompanied by an express allusion to a transaction which merely amounts to a civil injury, as breach of trust or contract, they are not actionable (per Ellenborough in *Thompson v. Barnard*, 1 *Camp.* 48; and per Kenyon, *Christie v. Correll*, *Peake*, 4).

The allegation, too, must be a direct charge of crime. Thus saying of another, that he had forsworn himself, is not actionable, without showing that the words had reference to some judicial inquiry (*Holt v. Scholefield*, 6 *T. R.* 691).

Exception (2). False words tending to cause exclusion from society are actionable per se.

Thus to allege the *present* possession of an infectious disease is actionable, but a charge of past infection is not; for it shows no present unfitness for society (see *Carslake v. Mapplodrum*, 2 *T. R.* 473; *Bloodworth v. Gray*, 7 *M. & G.* 334).

Exception (3). Words imputing to a man misconduct in, or want of some necessary qualification for, his office or trade, are actionable per se; although the office or trade is not one of which the court can take judicial notice (*Foulger v. Newcomb*, *L. R.*, 2 *Ex.* 327).

Thus words imputing drunkenness to a master mariner whilst in command of a ship at sea are actionable per se (*Irwin v. Brandwood*, 2 *H. & C.* 960; 33 *L. J.*, *Ex.* 257).

So where a clergyman is beneficed or holds some ecclesiastical office, a charge of incontinence is actionable; but it is not so if he holds no ecclesiastical office (*Gallway v. Marshall*, 23 *L. J.*, *Ex.* 78).

So to say of a surgeon "he is a bad character; none of the men here will meet him," is actionable (*Southee v. Denning*, 17 *L. J.*, *Ex.* 151; 1 *Ex.* 196).

Or of an attorney that "he deserves to be struck off the roll" (*Phillips v. Jansen*, 2 *Esp.* 624). But it is not ground for an action to say "he has defrauded his creditors, and been horsewhipped off the course at Doncaster," because this has no reference to his profession.

Repeating Slander. RULE 2.—Whenever an action will lie for slander or libel, it is of no consequence that the defendant was not the originator, but merely a repeater, or printer, and publisher of it; and if the damage arise simply from the repetition, the originator will not be liable (*Parkins v. Scott*, 1 *Hurl. & Coll.* 153; *Watkin v. Hall*, *L. R.*, 3 *Q. B.* 396; *McPherson v. Daniels*, 10 *B. & C.* 273); except (1) where the originator had authorized the repetition (*Kendillon v. Maltby*, *Car. & M.* 402); and (2) where the words are spoken to a person under a moral duty or obligation to communicate them to a third

(*Derry v. Handley*, 16 L. T., N. S., Q. B. 263).

(1) In that case, Cockburn, C. J., observes, "Where an actual duty is cast upon the person to whom the slander is uttered to communicate what he has heard to some third person, as when a communication is made to a husband, such as, if true, would render the person the subject of it unfit to associate with his wife and daughters, the slanderer cannot excuse himself by saying, 'True, I told the husband, but I never intended that he should carry the matter to his wife.' In such case the communicator is privileged, and an exception to the rule to which I have referred; and the originator of the slander, and not the bearer of it, is responsible for the consequences."

The reason of this rule is that an unauthorized repetition of words spoken is not the necessary result or consequence of the original utterance of such words.

(2) But where A. slandered B. in C.'s hearing, and C. without authority repeated the slander to D., *per quod* D. refused to trust B.: it was held that no action lay against A., the original utterer, as the damage was the result of C.'s unauthorized repetition and not of the original statement (*Ward v. Weeks*, 4 M. & P. 808).

(3) *Printing Slander.* So the printing and publishing by a third party of oral slander (not *per se* actionable), renders the person who prints, or writes and publishes the slander, and all aiding or

assisting him, liable to an action, although the originator, who merely *spoke* the slander, will not be liable (*McGregor v. Thwaites*, 3 B. & C. 35).

(4) Upon this principle the publisher, as well as the author of a libel, is liable; and the former cannot exonerate himself by naming the latter, for "of what use is it to send the name of the author with a libel that is to pass into a part of the country where he is entirely unknown? The name of the author of a statement will not inform those who do not know his character whether he is a person entitled to credit for veracity or not" (per Best, J., *Crespigny v. Wellesley*, 5 Bing. 403).

Newspaper Proprietors. Sub-rule 1.—*In an action for libel against the proprietor or editor of any newspaper or other periodical, the defendant may plead that the libel was inserted without malice and without gross negligence; and that at the earliest subsequent opportunity he inserted in such or some other publication a full apology; or, if such publication was published at intervals exceeding a month, that he offered to publish such apology in any paper the plaintiff might name. And upon filing such plea, the defendant may pay a sum into court by way of amends* (6 & 7 Vict. c. 96, s. 2).

Privileged Communication. RULE 3.—Where a communication is made *bonâ fide* upon any subject-matter in which the party

communicating has an interest, or in reference to which he has a duty, either public or private, either legal, moral, or social, such communication, if made to a person having a corresponding interest or duty, rebuts the inference of malice, and is privileged. When such is the case the onus of *proving* malice is thrown upon the plaintiff (*Ad. on Torts*, 770; *Harrison v. Bush*, 5 *E. & B.* 344; *Wright v. Woodgate*, 2 *C., M. & R.* 573; *Somerville v. Hawkins*, 10 *C. B.* 583; *Lawless v. Anglo-Egyptian Cotton Co.*, *L. R.*, 4 *Q. B.* 262; *Spill v. Maule*, *L. R.*, 4 *Ex.* 232; *Dunkins v. Lord Paulet*, *L. R.*, 5 *Q. B.* 94; *Davies v. Scud*, *L. R.*, 5 *Q. B.* 608; *Hewwood v. Harrison*, *L. R.*, 7 *C. P.* 606; *Laughton v. Bishop of Sodor and Man*, *ibid.* 608; *Hart v. Gumpach*, *L. R.*, 4 *P. C.* 439; *Kelly v. Tindling*, *L. R.*, 1 *Q. B.* 699; *Dickeson v. Hilliard*, *L. R.*, 9 *Ex.* 79).

This rule would seem to apply even when the person to whom the communication is made has not, in fact, any corresponding interest or duty, if the plaintiff honestly thought he had, and there were good and reasonable grounds for him so to think (*Harrison v. Bush*, *supra*).

Where in an action for libel the defendant insists that the publication is privileged, it is for the judge to rule whether the occasion creates a privilege. If

the occasion creates such privilege, but there is evidence of express malice, either from extrinsic circumstances or from the language of the libel itself, the question of express malice should be left to the jury (*Cook v. Wildes*, 5 E. & B. 328).

(1) *Parliamentary Proceedings*. Speeches in parliament are privileged (*Stockdale v. Hansard*, 9 A. & E. 1); and a faithful report in a public newspaper of a debate in either House of Parliament, containing matter disparaging to the character of an individual which had been spoken in the course of the debate, is not actionable at the suit of the person whose character has been called in question (*Wason v. Walter*, L. R., 4 Q. B. 73).

(2) *Judicial Proceedings*. Statements of a judge acting judicially, whether relevant or not, are absolutely privileged (*Scott v. Stansfield*, L. R., 3 Ex. 220); but those of counsel only if relevant and according to instructions. But fair comments on the opponent's case are allowable (*Hodgson v. Scarlett*, 1 B. & Al. 232). Attorneys acting as advocates have a like privilege (*Mackay v. Ford*, 29 L. J., Ex. 404). Statements of witnesses can never be the subject of an action (*Daubins v. Lord Rokesby*, L. R., 8 Q. B. 261). If false, the remedy is by indictment (*Henderson v. Broomhead*, 28 L. J., Ex. 360). Fair reports of trials are also privileged (*Lewis v. Levy*, 27 L. J., Q. B. 282); but the report of an application to a justice not sitting judicially is not privileged. An application to a magistrate for advice, for instance, is not privileged (*McGregor v. Thwaites*, 3 B. & C. 24).

(3) *Confidential Advice*. So advice given in confidence at the request of another, and for his protection, is privileged; and it seems that the presence of a third party makes no difference (*Taylor v. Hawkins*, 16 Q. B. 308; *Manby v. Witt*, 25 L. J., C. P. 294; 18 C. B. 514); but it seems doubtful whether a voluntary statement is equally privileged (see *Corhead v. Richards*, 15 L. J., C. P. 278; and *Fryer v. Kinnersey*, 33 L. J., C. P. 96).

Thus the character of a servant given to a person requesting it, is privileged (*Gardiner v. Shute*, 18 L. J., Q. B. 313; *Pattison v. Jones*, 8 B. & C. 578).

The character of a candidate for an office, given to one of his canvassers, was held to be privileged (*Charles v. Potts*, 34 L. J., Q. B. 247).

But imputations circulated freely against another in order to injure him in his calling, however bona fide made, are not privileged. Thus a clergyman is not privileged in slandering a schoolmaster about to start a school in his parish (*Gilpin v. Fowler*, 9 Ex. 615).

The unnecessary transmission by a post office telegram of libellous matter, which would have been privileged if sent by letter, avoids the privilege (*Williamson v. Freer*, L. R., 9 C. P. 393).

(4) *Criticism*. Lastly: Fair and just criticisms of literary publications and works of art are privileged, provided the private character of the author or artist is not attacked (*McLeod v. Whately*, 3 Car. & P. 311; *Carr v. Hood*, 1 Camp. 355; *Thompson v. Sharkell*, M. & M. 187).

Tradesmen's advertisements are within the mean-

ing of literary publications (*Paris v. Levy*, 30 *L. J.*, *C. P.* 1).

So, too, fair criticism is allowed upon the public life of public men, or men filling public offices; such as the conduct of public worship by clergymen (*Kelly v. Tindling*, *L. R.*, 1 *Q. B.* 699): provided such criticism does not touch upon their private lives (*Gathercole v. Miall*, 15 *M. & W.* 319).

Limitation. RULE 4.—All actions for oral slander must be commenced within two years next after the cause of action arose, and all actions for libel within six years.

Of course this rule is subject to the general ones particularly set out in the first part of this work.

It may be mentioned that where the tort consists of the actual damage caused by an oral slander, the period begins to run from the date of the damage, and not that of the slander (*Saunders v. Edwards*, 1 *Sid.* 95).

CHAPTER II.

OF MALICIOUS PROSECUTION.

AN action may be maintained for maliciously instituting criminal proceedings against another (*Churchill v. Siggers*, 3 Ell. & Bl. 937), or for maliciously causing him to be adjudicated a bankrupt (*Farley v. Danks*, 4 E. & B. 499; *Johnson v. Emerson*, L. R., 6 Ex. 329).

RULE 5.—In order to support an action for malicious prosecution the plaintiff must show (1) malice, and (2) want of probable cause on the part of the defendant, (3) that the former proceedings were determined in his favour, and that (4) he has suffered damage by reason of such prosecution.

I.—Malice. Malice, as I explained in the last chapter, is either express or implied.

Sub-rule 1.—*In an action for malicious prosecution malice is generally implied upon proof of absence of reasonable and probable cause for instituting the criminal proceedings* (*Johustone v. Sutton*, 1 T. R. 544).

(1) Thus where the defendant at the time of the prosecution of the plaintiff showed that he had a

consciousness of the innocence of the accused, it was held evidence of malice.

(2) So too where one is assaulted justifiably, and he institutes criminal proceedings for the assault; if in the opinion of the jury he commenced such proceedings knowing that he was wrong, and had no just cause of complaint, malice may be presumed (*Hinton v. Heather*, 14 *M. & W.* 131).

(3) So too it may be presumed, if it be shown that the defendant *knew* that the plaintiff against whom he had charged a theft, took the goods under an erroneous belief that he had a legal right to do so (*Huntley v. Simpson*, 27 *L. J., Ex.* 134).

(4) So where the prosecutor of another says that he is prosecuting him in order to stop his mouth, it is evidence that he knew him to be innocent, and therefore that the prosecution was malicious (*Heslop v. Chapman*, per Maule, J., 23 *L. J., Q. B.* 49).

The fact of malice is a question for the jury (*Payne v. Rican*, 9 *W. R.* 693).

Subsequent Malice. Sub-rule 2.—*A prosecution, though in the outset unmalicious, may become malicious if the prosecutor, having acquired positive knowledge of the innocence of the accused, proceeds malo animo in the prosecution* (per Cockburn, C. J., *Fitz John v. MacKinder*, 30 *L. J., C. P.* 264).

And where a person has not instituted, but only adopts and continues proceedings, the same principle applies (*Weston v. Beeman*, 27 *L. J., Ex.* 57).

Thus where, through the defendant's perjury, the judge of a county court, believing the plaintiff to

have perjured himself, committed him for trial, and bound over the defendant to prosecute him, which he did, but unsuccessfully; and after the criminal trial the plaintiff brought an action for malicious prosecution; it was held that the action was maintainable, because, although the defendant had not initiated the proceedings, yet there was no reason why he should have followed them up; for he might have discharged his recognizance by appearing and telling the truth (*Fitz John v. MacKinder*, 30 L. J., C. P. 264).

II.—Want of probable Cause. Although, as we have seen, malice may be implied from want of probable cause, in no case can the want of probable cause be implied from the mere existence of malice (*Johnstone v. Sutton*, 1 T. R. 544). In *Taylor v. Williams* (6 Bing. 186), Tindal, C. J., remarks, “Malice alone is not sufficient, because a person actuated by the plainest malice may, nevertheless, have a justifiable reason for prosecution.”

The existence of reasonable and probable cause is a question of law for the judge, the jury having ascertained the facts, if the facts are in dispute (per Kelly, C. B., *Perryman v. Lister*, L. R., 3 Ex. 202).

What is reasonable and probable cause “is a mere question of opinion depending entirely upon the view which the judges may happen to take of the circumstances in each particular case” (per Kelly, C. B., in *Perryman v. Lister*, *sup.*). “There must be a reasonable cause, such as would operate on the mind

of a discreet man; there must be also a probable cause, such as would operate on the mind of a reasonable man; at all events, such as would operate on the mind of the party making the charge, otherwise there is no probable cause for him" (*Broad v. Ham*, 5 Bing. N. C. 725).

Counsel's Opinion. A man cannot shield himself from the results of a malicious prosecution, on the ground that it was instituted under the advice of counsel. "It would be a most pernicious practice," remarks Heath, J., "if we were to introduce the principle that a man, by obtaining the opinion of a counsel, by applying to a weak man or an ignorant man, might shelter his malice in bringing an unfounded prosecution" (5 *Taunton*, 283).

III.—The former Proceedings must have been determined in the Plaintiff's favour. It is necessary to show that the proceeding alleged to have been instituted maliciously, and without reasonable or probable cause, has terminated in favour of the plaintiff, if, from its nature, it be capable of such a termination (*Baseby v. Mathews and Wife*, L. R., 2 C. P. 684).

This rule applies equally to the case where the plaintiff has been summarily convicted under a statute which gives no power of appeal (*Baseby v. Mathews*, *sup.*).

IV.—Damage. "In order to support an action for malicious prosecution or suit, it is necessary to show some damage resulting to the present plaintiff from

the former proceeding against him. This may be either the damage to a man's fame, as if the matter he is accused of be scandalous, or where he has been put in danger to lose his life, or limb, or liberty; or damage to his property, as where he is obliged to spend money in necessary charges to acquit himself of the crime of which he is accused" (*Mayne's Treatise on Damages*, p. 345).

In this case, as in slander, the damages must be the reasonable and probable cause of the malicious prosecution, and not too remote.

Non-liability of Complainant for Acts of Magistrate. RULE 6.—If a person *bona fide* makes a complaint to a magistrate, and the magistrate erroneously treats the matter as a felony, when it is in reality only a civil injury, and issues his warrant for the apprehension of the plaintiff, the defendant who complained to the magistrate is not responsible for the magistrate's error (*Wyatt v. White*, 29 *L. J.*, *Ex.* 193). But if there be no reasonable and probable cause for suspecting that a felony has been committed, and the defendant makes a specific charge of felony, it is otherwise.

Thus, if one, without reasonable and probable cause,

causes a search warrant to issue against the plaintiff, he is liable to an action; but if he merely goes before a magistrate and *bonâ fide* puts before him reasonable grounds of suspicion, and the magistrate thereupon, in the exercise of his discretion, issues the warrant, no action lies (*Cooper v. Booth*, 3 *Esp.* 144).

CHAPTER III.

OF FALSE IMPRISONMENT AND MALICIOUS ARREST.

What constitutes Imprisonment. RULE 7.
 —Where a total restraint for some period, however short, is put upon the liberty of another without sufficient legal authority, an action lies for the infringement of the right (*Bird v. Jones*, 7 Q. B. 743).

Moral Restraint. Imprisonment does not imply incarceration, but any restraint by force or show of authority; as, for instance, where a bailiff tells a person that he has a writ against him, and thereupon such person peaceably accompanies him, that constitutes an imprisonment (*Grainger v. Hill*, 4 Bing. N. C. 212).

But some total restraint there *must* be, for a partial restraint of locomotion in a particular direction, as by preventing the plaintiff from exercising his right of way over a bridge, is no imprisonment, for no restraint is thereby put upon his liberty (*Bird v. Jones*, *sup.*).

The rules which apply to imprisonments by private persons, and those which apply to imprisonments by

judges and other magistrates, are necessarily different.

It will be therefore more convenient to consider them separately and in order.

SECTION 1.

Of Imprisonments by Private Persons and Constables.

General Immunity. RULE 8.—No person can in general arrest or imprison another without a legal and legally executed warrant.

Exceptions. (1) *Bail*.—A person who is bail for another may always arrest and render him up in his own discharge (*Exp. Lyne*, 3 *Stark*. 132).

(2) *Felons*.—A treason or felony having *been actually committed*, a private person may arrest one *reasonably* suspected by him; but the suspicion must not be mere surmise (*Beckwith v. Philby*, 6 *B. & C.* 635).

A constable may, however, arrest merely upon reasonable suspicion that a felony has been committed, and that the party arrested was the doer, and even though it should turn out eventually that no felony has been committed he will not be liable (*Marsh v. Loader*, 14 *C. B.*, *N. S.* 535; *Griffin v. Coleman*, 28 *L. J.*, *Ex.* 134).

The suspicion, however, must be a reasonable one, or the constable will be liable. Thus where one told the defendant, a constable, that a year before he had had his harness stolen, and that he now saw

it on the plaintiff's horse, and thereupon the defendant went up to the plaintiff and asked him where he got his harness from, and the plaintiff making answer that he had bought it from a person unknown to him, the constable took him into custody, although he had known him to be a respectable householder for twenty years. It was held that the constable had no reasonable cause for suspecting the plaintiff, and was consequently liable for the false imprisonment (*Hogg v. Ward*, 27 *L. J.*, *Ex.* 413).

Where one man charges another with having committed a felony, and a constable at and by his direction takes that other into custody, the party making the charge, and not the constable, is liable should the charge turn out false (*Davis v. Russell*, 2 *M. & P.* 607).

"It would be most mischievous," Lord Mansfield remarks, "that the officer should be bound first to try, and at his peril exercise, his judgment as to the truth of the charge. He that makes the charge alone is answerable" (*Griffin v. Colman*, 4 *H. & N.* 265).

(3) *Breakers of Peace*.—A private person may and ought to arrest one committing, or about to commit, a breach of the peace, but not if the affray be over and not likely to recur (*Timothy v. Simpson*, 1 *Cr.*, *M. & R.* 757).

But it seems that a constable may arrest even after the affray (so that it be immediately after), in order to take the offender before a magistrate (*R. v. Lought*, 27 *L. J.*, *M. C.* 1).

(4) *Night Offenders*.—Any person may arrest and take before a justice one *found committing* an indictable offence between 9 p.m. and 6 a.m. (14 & 15 Vict. c. 19, s. 11).

(5) *Malicious Injuries*.—The owner of property, his servant, or a constable, may arrest and take before a magistrate any one *found committing* malicious injury to such property (14 & 15 Vict. c. 19, s. 11; 24 & 25 Vict. c. 97).

(6) *Offering Goods for Pawn*.—A private person to whom goods are offered for sale or pawn may, if he has reasonable ground for suspecting that an offence against the Larceny Amendment Act (24 & 25 Vict. c. 96) has been committed with respect to them, arrest the person offering them, and take him and the property before a magistrate.

(7) *Vagrants*.—Any person may arrest and take before a magistrate one *found committing* an act of vagrancy (5 Geo. 4, c. 83).

N.B. Such acts are soliciting alms by exposure of wounds, indecent exposure, false pretences, fortune-telling, betting, gaming in the public streets, and many other acts, for which I must refer to the 4th section of the Act.

In other cases, to justify an arrest, the warrant, writ or order of some competent court must be obtained, and the person arresting must have it with him at the time, ready to produce if demanded (*Gilliard v. Lorton*, 31 L. J., M. C. 123).

Under the 4th, 5th and 7th exceptions, it is no excuse to prove commission of the offence immediately

before the arrest, for the arrest must be made *in the course of the commission* of the offence (see *Sinnott v. Milligan*, 2 C. B. 533).

Particular Exceptions.—In London, the owner of property may arrest any one *found* committing any indictable offence, or misdemeanor in respect to it, punishable upon summary conviction.

Most Railway Acts, too, give power to officers of the company to detain unknown offenders against the Act.

Officers in the army may arrest a deserter, and ship masters have special powers of imprisoning crew and passengers.

Special powers too are frequently given to the police of certain towns and cities by their local acts.

SECTION 2.

Of Imprisonment by Judicial Officers.

RULE 9.—No judicial officer, invested with authority to imprison, is liable to an action for a wrongful imprisonment, unless he acted beyond his jurisdiction (*Doswall v. Impey*, 1 B. & C. 169; *Kemp v. Neville*, 10 C. B., N. S. 523); not even though he imprisons the plaintiff maliciously (*Miller v. Hope and Shaw*, Sc. App. Cas. 125; *Reon v. Smith*, 18 C. B. 126; *Henderson v. Broomhead*, 4 H. & N. 569. See also *Dawkins v. Paullet*, L. R., 5 Q. B. 94).

(1) In the case of *Scott v. Stansfield* (*L. R.*, 3 *Ex.* 220), which, though an action of slander, will very well repay a careful perusal, Kelly, C. B., remarks, "It is essential, in all courts, that the judges, who are appointed to administer the law, should be permitted to administer it under the protection of the law independently and freely, without favour and without fear. This provision of the law is not for the protection, or benefit, of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences. How could a judge so exercise his office, if he were in daily and hourly fear of an action being brought against him, and of having the question submitted to a jury, whether a matter, on which he had commented judicially, was or was not relevant to the case before him ?

"Again, if a question arose as to the *bona fides* of the judge, it would have, if the analogy of similar cases is to be followed, to be submitted to the jury. Thus, if we were to hold that an action is maintainable against a judge for words spoken by him in his judicial capacity, under such circumstances as those appearing on these pleadings, we should expose him to constant danger of having questions, such as that of good faith or relevancy, raised against him before a jury, and of having the mode in which he might administer justice in his court submitted to determination. It is impossible to over-estimate the inconvenience of such a result. For these reasons I am most strongly of opinion that no such action

as this can under any circumstances be maintainable" (a).

(2) Where a court has jurisdiction of a matter before it, but acts erroneously, the parties suing, the court itself, and the officers executing its orders or warrants, will be protected from any action at the suit of a person arrested. But where it has no jurisdiction all these parties may be liable (*Conyn, Dig. tit. County Court*, 8; *Houlden v. Smith*, 14 Q. B. 841; *Wingate v. Waite*, 6 M. & W. 746).

(3) So where a magistrate acts without those circumstances which must concur to give him jurisdiction he will be liable (*Morgan v. Hughes*, 2 T. R. 225).

Jurisdiction. In order to constitute a jurisdiction such officer must have before him some suit or complaint about which he has authority to inquire. Thus an information brought before a magistrate charging an offence within his cognizance gives him jurisdiction (*Care v. Mountain*, 1 M. & G. 257).

(a) Whether a magistrate would be equally exempted from liability in cases where he had acted maliciously, does not seem to have been decided. It will at once appear that the judgment of the Chief Baron, which I have cited at considerable length on account of its lucid enunciation of the principles on which this exception is based, is broad enough to include actions brought against a justice of the peace. At the same time, it must be admitted the first section of Jervis' Act (11 & 12 Vict. c. 41), as has been pointed out by Mr. Roscoe in his *Law of Nisi Prius Evidence*, would seem to imply that such an action could be supported. There the matter rests, but I confess I have little doubt, should the question ever arise, that, provided he acts within his jurisdiction, a magistrate is no more answerable by action, that is to say, for a malicious act than is a judge of a county court or of the High Court. In this opinion the learned author above cited seems to concur.

Prima facie Jurisdiction. Sub-rule.—*A judge of an inferior court having a prima facie jurisdiction over a matter is not responsible for a false imprisonment committed on the faith of such prima facie jurisdiction, if by reason of something of which he could have no means of knowledge he really has no jurisdiction (Calder v. Halkett, 3 Moore, P. C. C. 28).*

Thus if through an erroneous statement of facts a person be arrested under process of an inferior court for a cause of action not accruing within its jurisdiction, no action lies against the judge or officer of the court, but against the plaintiff only (*Olliett v. Bessey, 2 W. Jones, 214*).

In general, however, where a court has jurisdiction, the person setting it in motion is not liable for a false imprisonment committed under its order, unless he set it in motion maliciously; but where it has no jurisdiction the complainant will be liable, even though acting *bonâ fide* (*West v. Smallwood, 3 M. & W. 421*).

Contempt of Court. RULE 10.—The superior courts of law and equity have power to punish by commitment for any insult offered to them, and any libel upon them, or any contemptuous or improper conduct committed by any person with respect to them; but inferior courts of record have power only to commit for contempts committed in the court.

(1) During the pendency of a suit, the publisher

of a newspaper commits a contempt of court if he publishes extracts from the affidavits with comments upon them (*Tichborne v. Mostyn*, *L. R.*, 7 *Eq.* 56).

(2) Where an indictment has been removed into the Court of Queen's Bench, and a day appointed for trial, the holding of public meeting, alleging that the defendant is not guilty, and that there is a conspiracy against him, and that he cannot have a fair trial, is a contempt of court (*Ouslow's and Whalley's case*, *Reg. v. Castro*, *L. R.*, 9 *Q. B.* 219).

(3) A solicitor is guilty of a contempt of court in writing for publication letters tending to influence the result of a suit (*Davis v. Eley*, *L. R.*, 7 *Eq.* 49).

(4) It seems that the judge of a county court has power only to commit for contempts committed in the court and whilst it is sitting. (See *R. v. Leroy*, *Weekly Notes*, Feb. 8, 1873.)

(5) A justice of the peace may commit one who calls him in court a liar (*Ree v. Reed*, 1 *Str.* 421).

Justices. RULE 11.—If a felony or breach of the peace be committed in view of a justice, he may personally arrest the offender or command a bystander to do so, such command being a good warrant. But if he be not present he must issue his written warrant to apprehend the malefactor (2 *Hale*, *Pl. Cr.* 86).

Protection of Justices acting without Jurisdiction. RULE 12.—Where a justice acts in a matter without any or beyond his jurisdiction, a person injured by any conviction or order issued by such justice in such matter cannot maintain an action in respect thereof until such conviction shall have been quashed by the proper tribunal in that behalf, nor for anything done under a warrant followed by a conviction or order, until such conviction be quashed, nor at all for anything done under a warrant for an indictable offence, if a summons had been previously served and not obeyed. (See 11 & 12 Vict. c. 44.)

Constables executing the warrants of justices issued without jurisdiction are specially protected by 24 Geo. 2, c. 44, ss. 6, 8, from any action, unless they have refused for six days after written demand to produce the warrant.

It may be also observed that, by sect. 9, a month's notice is required to be given before commencing an action against a justice for any act done in the execution of his office; and by 11 & 12 Vict. c. 44, s. 11, if after such notice, and before the commencement of the action, the justice tender a sum of money in amends, then if the jury shall be of opinion that such sum is sufficient they shall give their verdict for the defendant. A justice acting maliciously is en-

titled to notice and to tender amends (*Leary v. Patrick*, 15 Q. B. 272).

Malicious Arrest. This consists in wilfully putting the law in motion to effect the arrest of another without cause. Its occurrence, owing to the practical abolition of imprisonment for debt by the Debtors' Act, 1869, is now infrequent.

RULE 13.—Any person maliciously causing the arrest of another is liable to an action.

By a malicious act is not only meant a wicked and spiteful act, but also a deliberately intentional wrong, although done without any actual spite or ill-feeling.

(1) Therefore, if by a false statement or suppression a man obtains the arrest of another, he is liable to an action.

(2) So a false affidavit whereby a judge's order is obtained for the arrest of an absconding debtor, renders the deponent liable to the person arrested.

Habeas Corpus. Such are the leading principles of law relating to deprivation of liberty; it remains to notice a peculiar and unique remedy which the law affords in addition to that by action. I mean the writ of habeas corpus ad subjiciendum.

This writ may be obtained upon motion to any of

the superior courts of law or equity, or to a judge when those courts are not sitting. Probable cause must be shown by the person moving that there is a wrongful detention, and if the court or judge thinks that there is reasonable ground for suspecting illegality the writ is granted.

It is directed to the individual detaining the person in custody, and commands him to produce the body of the prisoner in court on a certain day, and there account for his detention, and to do and submit to whatsoever the court or judge shall order in the matter. If on the day mentioned the detainer can justify the detention, the prisoner is remitted to his custody. If not he is discharged, and may then have his remedy by action.

The writ of habeas corpus existed at common law, but it has been more formally declared and defined by statutes, chief among which are 31 Car. 2, c. 2, and 56 Geo. 3, c. 100.

Limitation. RULE 14.—No action shall be brought for false imprisonment except within four years next after the cause of action arose.

It must be recollected that imprisonment is a continuing tort, and therefore the period runs from the last day of the imprisonment, and not from the first.

Exceptions. (1) *Justices.*—An action against a justice of the peace for anything done by him in the

execution of his office must be commenced within six calendar months next after the commission of the act complained of (11 & 12 Vict. c. 44, s. 8).

(2) *Constables*.—Various Acts for the appointment and regulation of police limit the period within which actions may be brought against them. The following are the most important: 10 Geo. 4, c. 44, relating to the Metropolitan police, by sect. 41 enacts that all actions for anything done in pursuance of the Act shall be (inter alia) commenced within six calendar months, and that a month's written notice shall be given to them, and the same provision is extended to special constables and county policemen by 1 & 2 Will. 4, c. 41, and 2 & 3 Vict. c. 93, respectively. Borough constables are protected in a similar manner by 5 & 6 Will. 4, c. 76, s. 113; and sect. 76 of the same act enacts that men sworn as such shall not only within the borough, but also within the county in which the same is situated, and in any county within seven miles of such borough, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable at the time of the passing of that act had or thereafter might have within his constablewick.

Constables may also pay money into court. (See 11 & 12 Vict. c. 44, ss. 9, 11.)

All such actions against justices and constables must (by various acts) be laid in the county in which the trespass was committed.

CHAPTER IV.

OF ASSAULT AND BATTERY.

Direct and Indirect bodily Injuries. Torts affecting the body are either the immediate results of force put in motion by the defendant, or the indirect results of wrongful conduct on his part. In this chapter I shall speak of direct bodily injuries or trespasses.

Causing Death. Direct personal injuries causing death are crimes of a most heinous nature. They rather come, therefore, under the ordinances of the criminal than of the civil law. Putting these aside, all other direct bodily injuries may be considered as either assaults or more or less aggravated forms of battery.

Definition of Assault. An assault is an unsuccessful attempt to do harm to the person of another.

RULE 15.—If one make an attempt, and have at the time of making such attempt a present ability to do harm to the person of another, although he actually do no harm, it is nevertheless an assault.

(1) Such, for instance, is menacing with a stick a person within reach thereof, although no blow be struck (*Read v. Coker*, 13 C. B. 850).

(2) But a mere threat is no assault, unless there be a present ability to carry it out.

This was illustrated by Pollock, C.B., in *Cobbet v. Grey* (4 Eech. 744). "If," said that learned judge, "you direct a weapon, or if you raise your fist within those limits which give you the means of striking, that may be an assault; but if you simply say, at such a distance as that at which you cannot commit an assault (a), 'I will commit an assault,' I think that is not an assault."

(3) To constitute an assault there must be an attempt. Therefore, if a man says that he would hit another were it not for something which withholds him, that is no assault, as there is no apparent attempt (*Tuberville v. Savage*, 1 Mod. 3).

(4) For the same reason shaking a stick in sport at another is not actionable (see *Christopherson v. Barr*, 11 Q. B. 477).

Battery. RULE 16.—The least touching of another's person hostilely or against his will is a battery (*Rawlings v. Till*, 3 M. & W. 28).

This touching may be occasioned by a missile or any instrument set in motion by the defendant, as

(a) Query—battery.

by throwing water over another (*Russell v. Horne*, 8 A. & E. 602), or spitting in his face. In accordance with the rule a battery must be involuntary; therefore a voluntarily suffered beating is not actionable (Patteson, J., in *Christopherson v. Bare*, 11 Q. B. 477). Merely touching a person in order to engage his attention is, however, no battery (*Coward v. Baddeley*, 28 L. J., Ex. 261).

Wounding and Maiming. If the violence be so severe as to wound, the damages will be greater than those awarded for a mere battery; so also if the hurt amount to a mayhem (that is, a deprivation of a member serviceable for defence in fight), but otherwise the same rules of law apply to these injuries as to ordinary batteries.

Intention. Rule 17.—An injury may be a trespass although unintentional, unless it were the result of inevitable accident (*Covell v. Laming*, 1 Camp. 477).

(1) Thus where the defendant unintentionally upset the plaintiff in his carriage, it was held to be a trespass (*Hopper v. Reece*, 7 Taunt. 698).

(2) Indeed an act which is of itself lawful may be a trespass if another suffers damage thereby, for every bodily injury is an invasion of a right and is actionable unless caused by unavoidable accident (in which case it may be said to be the act of no one), or by the negligence or malice of a third party.

Thus if a man assault me, and in lifting up my stick to defend myself I hit another, an action lies against me (per Blackstone, J., in *Scott v. Shepherd*, 2 *W. Bl.* 894); and so in *Weaver v. Ward*, it was held that no man shall be excused of a trespass, except it may be judged utterly without his fault (*Hob.* 134).

Such being the nature of a battery, let us now consider when it is, and when not, a tort.

RULE 18.—Every man has an inherent right to immunity from interference with, or violence or injury to, his body at the hands of any other person.

Exceptions. (1) *Self-Defence.*—A battery is justifiable if committed in self-defence. Such a plea is called a plea of son assault demesne. But to support it, the battery justified must have been committed in actual defence, and not afterwards and in mere retaliation (*Cockcroft v. Smith*, 11 *Mod.* 43). Neither does every common battery excuse a mayhem. As, if “A. strike B., B. cannot justify drawing his sword, and cutting off A.’s hand,” unless there was a dangerous scuffle, and the mayhem was inflicted in self-preservation (*Cooper v. Beale*, *L. Raym.* 177).

(2) *Defence of Property.*—A battery committed in defence of real or personal property is justifiable.

Thus if one forcibly enters my house, I may forcibly eject him; but if he enters quietly, I must

first request him to leave. If after that he still refuse, I may use sufficient force to remove him, in resisting which, he will be guilty of an assault (*Whcelor v. Whiting*, 9 C. & P. 265).

So a riotous customer may be removed from a shop after a request to leave.

(3) *Correction of Pupil*.—A father or master may moderately chastise his son, pupil, or apprentice (*Penn v. Ward*, 2 Cr., M. & R. 338).

Other Exceptions.—An assault may be committed in order to stop a breach of the peace; to arrest a felon, or one, when a felony having actually been committed, is reasonably suspected of it; in arresting a person *found committing* a misdemeanor between the hours of 9 p.m. and 6 a.m.; in arresting a malicious trespasser, or vagrant under the Vagrancy Act.

A churchwarden or beadle may eject a disturber of a congregation, and a master of a ship may assault and arrest an unruly passenger. So assaults and batteries, committed under legal process, are justifiable; but a constable ought not *unnecessarily* to handcuff an unconvicted prisoner, and if he do so he will be liable to an action (*Griffin v. Coleman*, 28 L. J., Ex. 134) (a).

Defence under 24 & 25 Vict. c. 100. By sections 42, 44, 45, it is enacted, in effect, that,—

Sub-rule.—*Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon*

(a) The same rule as to notice, tender of amends and limitation applies to batteries committed by constables in the execution of their duty as in false imprisonment.

complaint by or on behalf of the party aggrieved, may hear and determine such offence, and if the justices, upon the hearing of any such case, should deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate stating the fact of such dismissal, and shall deliver the same to the party charged; and if any such person shall have obtained such certificate, or having been convicted shall have paid the amount of the fine imposed, or shall have suffered the imprisonment inflicted, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause (see also sect. 43).

(1) A party having been summoned before two justices under 9 Geo. 4, c. 31, s. 27 (a statute containing an enactment similar to the above), for an assault, appeared and pleaded not guilty; the plaintiff declined to proceed, stating that he meant to bring an action. The justices dismissed the complaint, and gave the following certificate:—"We deemed the offence not proved, inasmuch as the complainant did not offer any evidence in support of the information, and have accordingly dismissed the complaint:" held, that what passed before the justices constituted a hearing, and that the certificate was a complete bar to an action for the assault (*Tunnichly v. Todd*, 5 C. B. 553).

As to what constitutes a "hearing," see also *Vaughton v. Bradshaw*, 9 C. B., N. S. 103.

(2) The words "from all further or other proceed-

ings against the defendant, civil or criminal, for the same cause," include all proceedings against the defendant arising out of the same assault, whether taken by the prosecutor or by any other person consequentially aggrieved thereby (*Masper and wife v. Brown*, *L. R.*, 1 *C. P. Div.* 97; 25 *W. R.* 62).

(3) If a person is charged for an assault, and the complaint is dismissed and a certificate given him, he cannot avail himself of the defence under the statute, when sued on for the tort, unless he specially pleads such defence (*Harding v. King*, 6 *C. & P.* 427).

Damages. **RULE 19.**—In assessing what amount of damages may be recovered for an assault, or battery, or mayhem, the time when, and the place in which, the assault took place should be taken into consideration.

Thus an assault committed in a public place calls for much higher damages than one committed where there are few to witness it. "It is a greater insult," remarks Bathurst, J., in *Tullidge v. Wade* (3 *Wils.* 19), "to be beaten upon the Royal Exchange than in a private room."

Limitation. Rule 14 applies to assault and battery.

CHAPTER V.

OF BODILY INJURIES CAUSED BY NUISANCES.

Definition. The word nuisance (from the French *nuire*, to hurt) is applied in the English law indiscriminately to infringements of proprietary or personal rights (*Id.* 155) ; but for the purposes of this chapter it may be defined, as any wrongful conduct in the management of property, or any wrongful interference with the property of the public, not necessarily depending for its wrongful character upon negligence.

General Duty. RULE 20.—A person is bound so to use his property as not to injure other persons, and he is also bound to observe the express provisions of the law with regard to the user of his own and the public property.

(1) *Excavations.* Thus where a man makes an excavation adjoining a highway, and keeps it unfenced, he will be liable for any injury occasioned to a person falling into it (*Barnes v. Ward*, 9 C. B. 392 ; *Bishop v. Trustees of Bedford Chur.*, 28 L. J., Q. B. 215).

(2) *Noxious Fumes.* And so anything injurious

to the health of persons living near, as a foul cess-pool, or any noisome or noxious employment, act, or omission, is a nuisance.

(3) *Statutory Nuisances.* Certain acts have been declared nuisances by statute, and private damage caused by them is of course actionable. Thus by 24 & 25 Vict. c. 100, s. 31 (re-enacting 7 & 8 Geo. 4, c. 18), the setting of spring-guns, man-traps, or other engines calculated to kill or do grievous bodily harm to a trespasser is made a misdemeanor, and even a trespasser hurt thereby may recover; for although it would be partly owing to his own misconduct, yet if the defendant might, by acting rightly, have avoided doing the injury, the plaintiff's contributory misconduct is no excuse. But this act does not apply to the setting of traps or guns in the night in dwelling-houses for the protection thereof.

(4) So by the General Highway Act, 5 & 6 Will. 4, c. 50, s. 70, it is made illegal for any person to sink any pit, or erect any steam or other like engine, gin, or machinery attached thereto, within twenty-five yards from any part of a carriage or cart way, unless concealed within some building or behind some fence, so as to guard against danger to passengers, horses, or cattle. It also prohibits the erection of windmills within fifty yards, and fires for the burning ironstone, limestone, or making bricks or coke, within fifteen yards of a carriage or cart way.

Sect. 72 prohibits the letting off of fireworks or firearms within fifty feet of the centre of the way, as also laying of things upon it or obstructing it in any way.

This Act creating these or some of these duties, any corporal injury caused to an individual by their non-observance is actionable, even though the person injured were trespassing at the time (within twenty-five yards of the way). But if the Act has been complied with, any injury caused by any of the things therein mentioned would be no ground of action, there being no *injuria* or wrongful act.

(5) Thus where the defendants were owners of waste land bounded by two highways, and worked a quarry outside the prohibited distance in such land, and the plaintiff, walking over the waste, fell into the quarry and broke his leg, it was held that no action lay, the plaintiff being a mere trespasser (*Hounsell v. Smith*, 29 *L. J.*, *C. P.* 203; and see *Binks v. S. Y. & R. D. R. Co.*, 32 *L. J.*, *Q. B.* 26; *Hardcastle v. S. W. & Y. D. R. Co.*, 23 *L. J.*, *Ex.* 139).

And so, by the civil law, a trespasser could not recover for injuries suffered whilst trespassing, through the dangerous business of the landowner, for "*extra culpam esse intelligitur si seorsum a via forte vel in medio fundo cedebat, quia in loco nulli extraneo jus fuerat versandi*" (*Inst.*, lib. iv., iii. 5).

(6) *Ruinous Premises.* Leaving premises adjoining a highway, or the land of another, in a ruinous condition is a public nuisance entitling a person, injured thereby, to damages (*Todd v. Flight*, *L. J.*, *C. P.* 21).

Negligence Immaterial. RULE 21.—When anything has been done or permitted upon property, which has in fact created or

perpetuated a nuisance, the person in possession of the property is liable for any damage caused thereby, notwithstanding that he employed a competent person to do or repair the thing.

Thus, in *Terry v. Ashton* (*L. R.*, 1 *Q. B. Div.* 314), the defendant had a lamp or lamp-iron projecting from his premises over the street, and had given orders to a competent contractor to repair it; but the contractor had done the work badly, by reason of which the lamp fell and injured the plaintiff: Held, that the defendant was liable. And Lush, J., said: "The question is, What is the duty of an occupier who has a lamp in the position of that of the defendant? Is his duty absolutely to maintain that lamp in proper repair, or to employ a competent person to repair it? I apprehend that the wider duty is incumbent on the occupier. He permits a lamp to hang over the public highway, and continues it there for the benefit of his own trade, and thereby, if the lamp is not in a safe condition, puts the public in danger. He is thus placed under a liability which he cannot shift from his own shoulders by saying, 'I have employed another person to do it for me.' He, and he only, is primarily bound to keep the lamp in repair, and he is answerable for the consequences if it is not so, and has his remedy over against the negligent contractor."

Owner and Occupier. But here a question arises as to the respective liabilities of the landlord and the tenant.

RULE 22.—As between landlord and tenant, there is no implied obligation on the part of the former that the property is in a safe condition (*Keats v. Cadogan*, 20 *L. J.*, *C. P.* 21). With regard to third parties, the tenant is the person responsible for any injury resulting from the premises being out of repair, and the landlord will also be responsible if he has done any act authorizing the continuance of the dangerous state of the house (per Bovill, *C. J.*, *Pretty v. Bickmore*, *L. R.*, 8 *C. P.* 404.)

(1) Thus, if in consequence of the ruinous state of a house, the chimney fall and injure the tenant's family, yet he has no remedy, unless the landlord had contracted to keep the house in repair, or unless there was fraud on his part in concealing the defect from the tenant (*Gott v. Gandy*, 23 *L. J.*, *Q. B.* 1; *Keats v. Cadogan*, 20 *L. J.*, *C. P.* 76).

(2) The defendant let premises to a tenant under a lease, by which the latter covenanted to keep them in repair. Attached to the house was a coal-cellar under the footway, with an aperture covered by an iron plate, which was, at the time of the demise, out of repair and dangerous. A passer by, in consequence, fell into the aperture, and was injured: Held, that the obligation to repair, being, by the

lease, cast upon the tenant, the landlord was not liable for this accident. And Keating, J., said, "In order to render the landlord liable in a case of this sort, there must be some evidence that he authorized the continuance of this coal shoot in an insecure state; for instance, that he retained the obligation to repair the premises: that might be a circumstance to show that he authorized the continuance of the nuisance. There was no such obligation here. The landlord had parted with the possession of the premises to a tenant, who had entered into a covenant to repair (see also *Gwinnell v. Eamer*, *L. R.*, 10 *C. P.* 658, and *Rich v. Basterfield*, 16 *L. J.*, *C. P.* 273; and comp. *Roswell v. Prior*, 12 *Mood.* 639).

(3) In *Nelson v. The Liverpool Brewery Co.* (25 *W. R.* 877) Lopes, J., laid it down, that the owner of premises demised to a tenant is not liable for an injury sustained by a stranger, owing to the premises being out of repair, unless he has either contracted to do the repairs, or *has let the premises in a ruinous and improper condition*. It is, however, humbly suggested that the last alternative is not accurate, except where the tenant has not undertaken the repairs; and the dictum is not a complete summary of the law, inasmuch as there may be possible cases where the landlord may *prevent* the tenant from repairing a nuisance, by threatening an action for waste.

(4) But in *Todd v. Flight* (30 *L. J.*, *C. P.* 21; 9 *C. B.*, *N. S.* 377), where the declaration contained an allegation that the defendant let the houses when the chimneys were known by him to be ruinous and

in danger of falling, and that he *kept and maintained them in that state*, and the case was tried on demurrer, and the allegation was therefore assumed to be true, it was held that the landlord was liable.

Nuisances on Private Ways. RULE 23.—When a person expressly or impliedly permits others to come on to private ways on his land, he is liable for any injury caused to them by a nuisance thereon or near to the same, but not if they stray from such paths and trespass on the adjoining ground.

(1) Thus a person permitting the use of a pathway to his house, holds out an invitation to all having any reasonable ground for coming to the house, to use his footpath, and he is responsible for neglecting to fence dangerous places; and so also a shopkeeper, who leaves a trap-door open without any protection, is liable to a person lawfully coming there who suffers injury by falling through such trap-door (Tindal, C. J., *Launceston Canal Co. v. Parnaby*, 11 A. & E. 243; *Barnes v. Ward*, 9 C. B. 420; 19 L. J., C. P. 200; and see *Blyth v. Topham*, 1 Roll. Ab. 88).

But where a person, straying from the ordinary approaches to a house, trespasses where there is no path, and falls into an unguarded pit, he has no remedy for any injury suffered thereby, as the hurt is in such case caused by his own carelessness and

misconduct, and accordingly the doctrine of contributory negligence applies (Wilde, B., *Bolch v. Smith*, 31 L. J., Ex. 203).

(2) Railway companies are responsible for the state of their works, and therefore are liable to any person injured by the faulty construction or negligent keeping up of their bridges, embankments, &c. (*Chester v. Holyhead R. Co.*, 2 Ex. 251). But if the ruinous state has been caused by a *vis major* or act of God, (as where the railway gave way through an extraordinary flood,) the company are not liable, provided their line was constructed so firmly as to be capable of resisting the foreseen though more than ordinary attacks of the weather (*Withers v. North Kent R. Co.*, 27 L. J., Ex. 417; *G. W. R. Co. of Canada v. Fawcett*, 1 Moore, P. C. C., N. S. 120).

(3) *Canals*. So too canal companies are bound to take reasonable care to make their canal as safe as possible to those using it (*Lanc. Can. Co. v. Parnaby*, 11 A. & E. 243).

Injuries to Guests. RULE 24.—Mere guests, licensees and volunteers are considered as temporary members of the host's family, and can therefore only recover for injuries caused to them by hidden dangers which they did not know of, but which the host knew or ought to have known of. But visitors on business which concerns the occu-

pier of premises, may maintain an action for any injury caused by the unsafe state of the premises.

(1) Thus in *Southcote v. Stanley* (1 H. & N. 247), the plaintiff was a guest of the defendant's, and when leaving the house a loose pane of glass fell from the door as he was pushing it open and cut him. It was held, that the plaintiff being a guest was for the time being one of the family and could not recover for an accident, the liability to suffer which, he shared in common with the rest of the family.

(2) *Persons coming on Business.* But where, on the contrary, a workman came *on business* to the defendant's manufactory, and there fell down an unguarded shaft, the defendant was held to be liable; although it would have been otherwise had the plaintiff been one of his own servants, for it was not a hidden danger (*Indermaur v. Dames*, L. R., 1 C. P. 274; 2 *ib.* 311).

(3) The plaintiff, a licensed waterman, having complained to the person in charge that a barge of the defendants was being navigated unlawfully, was referred to the defendants' foreman. While seeking the foreman, he was injured by the falling of a bale of goods so placed as to be dangerous, and yet to give no warning of danger: Held, that the defendants were liable (*White v. France*, L. R., 2 C. P. D. 308).

(4) *Nuisances on Railway Stations.* So in the case of railway companies, the company must take great care to ensure the safety of persons coming to their station, and if through want of light or proper direc-

tions any such person is injured, he may maintain an action against the company. Thus, where the plaintiff, having a return ticket, arrived at the wrong side of the station, and there being no proper crossing, and no directions, crossed the line in order to get to his train, and in doing so, on account of the ill-lighted condition of the station, fell over a switch and was injured, it was held that an action lay against the company (*Martin v. G. N. R. Co.*, 24 *L. J.*, *C. P.* 209; *Burgess v. G. W. R. Co.*, 32 *L. T.* 76).

The principle to be gathered from these cases seems to be, that a guest or licensee who comes for his own pleasure must take the risk of any ordinary dangers attending it, but that one who comes on lawful business has a right to immunity from all but inevitable dangers.

Limitation. RULE 25.—Actions for injuries to the person must be brought within the period of six years next after the cause of action arose.

Exception.—Where the injury has caused death, any action brought by the personal representative, under Lord Campbell's Act, must be commenced within twelve calendar months from the death (sect. 3).

CHAPTER VI.

OF INJURIES TO PERSON OR PROPERTY CAUSED BY
NEGLIGENCE.

It is a public duty, incumbent upon every one, to exercise due care in his daily life; and any damage resulting from his negligence is a tort.

Definition. RULE 26.—The negligence in respect of the duty which is actionable, is the omission to do something which a reasonable man would do, or the doing something which a reasonable man would not do (*Blythe v. Birm. Water Co.*, 25 L. J., Ex. 212).

(1) Thus, where the plaintiff was in the occupation of certain farm buildings, and of corn standing in a field adjoining the field of the defendant, and the defendant stacked his hay on the latter, knowing that it was in a highly dangerous state and likely to catch fire, and it subsequently did ignite and set fire to the plaintiff's property, it was held, that the defendant was liable (*Vaughan v. Menloce*, 3 Bing. N. C. 468).

(2) So where the defendant entrusted a loaded gun to an inexperienced servant girl, with directions to take the priming out, and she pointed and fired it at the plaintiff's son, wounding and injuring him—the defendant was held liable (*Dixon v. Bell*, 5 M. & S. 198).

(3) On the other hand, a water company whose apparatus was constructed with reasonable care, and to withstand ordinary frosts, was held not to be liable for the bursting of the pipes by an extraordinarily severe frost (*Blythe v. B. W. W. Co., sup.*).

(4) And so where the defendants' line was misplaced by an extraordinary flood, and by such misplacement injury was done to the plaintiff, it was held that no action could be maintained against the defendants (*Withers v. The North Kent R. Co., 27 L. J., Ex. 417*).

(5) Again, a valuable greyhound was delivered by its owner to the servants of a railway company, who were not common carriers of dogs, to be carried; and the fare was demanded and paid. At the time of delivery the greyhound had on a leathern collar, with a strap attached thereto. In the course of the journey, it being necessary to remove the greyhound from one train, to another which had not then come up, it was fastened by means of the strap and collar to an iron spout on the open platform of a station, and, while so fastened, it slipped its head, ran on the line, and was killed: Held, that the fastening the greyhound by the means furnished by the owner himself, which at the time appeared to be sufficient, was no evidence of negligence (*Richardson v. N. E. R. Co., L. R., 7 C. P. 78*).

See also *Holmes v. Mather, L. R., 10 Ex. 261*; *Watling v. Oastler, L. R., 6 Ex. 73*; *John v. Bacon, L. R., 5 C. P. 437*; *Welfare v. London and Brighton R. Co., 4 Q. B. 693*; *Daniel v. Met. R. Co., L. R., 5 H. L. 45*; *Richardson v. G. E. R. Co., L. R., 10*

C. P. 486; *Smith v. G. E. R. Co., L. R., 2 C. P. 4*; *Simson v. London General Omnibus Co., L. R., 8 C. P. 390*.

(6) From the above rule and illustrations, it will be seen that the term negligence is quite a relative expression, and that in deciding whether a given act is, or is not, negligent, the circumstances attending each particular case must be fully considered. "A man," it has been said, "who traverses a crowded thoroughfare with edged tools, or bars of iron, must take especial care that he does not cut or bruise others with the things he carries. Such person would be bound to keep a better look out than the man who merely carried an umbrella; and the person who carried an umbrella would be bound to take more care in walking with it than a person who had nothing at all in his hands."

Contributory Negligence. RULE 27.—Though negligence whereby actual damage is caused is actionable, yet if the plaintiff has himself contributed to his loss, he cannot recover from the defendant, except in the case hereinafter mentioned.

The same principle held in the civil law, "*Imperitia quoque culpæ enumeratur; veluti si medicus ideo servum tuum occiderit, quod eum male secuerit aut perperam ei medicamentum dederit*" (*Inst. lib. iv., iii. 7*). And so contributory negligence was held an excuse in case of injury occurring to another. Indeed,

the civilians carried the principle much further than we do.

(1) This rule is well illustrated by two cases, in each of which the *damnum* was the same. In *Fordham v. L. B. & S. C. R. Co.* (*L. R.*, 4 *C. P.* 719) the facts were these. The guard of one of the defendants' trains, forcibly closed the door of one of the carriages without giving any warning, whereby the hand of the plaintiff, who was entering the carriage, was crushed. It was held, that the jury were justified in finding that the guard was guilty of negligence, and that there was no contributory negligence on the part of the plaintiff.

(2) Where, however, the plaintiff, on entering a railway carriage, left his hand on the edge of the door half a minute after so entering, and the guard gave due warning before shutting the door, it was held that the act was attributable to the plaintiff's contributory negligence, in leaving his hand carelessly upon a door which he must have known would be immediately shut (*Richardson v. Metropolitan R. Co.*, *L. R.*, 3 *C. P.* 326).

(3) And so in cases of collision, the question is, whether the disaster was occasioned wholly by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the disaster, by his own negligence, or want of common and ordinary care, that but for his default in this respect the disaster would not have happened. In the former case he recovers, in the latter not (*Tuff v. Warman*, 27 *L. J.*, *C. P.* 322); and for

further illustrations of the rule, see *Sketton v. L. & N. W. R. Co.*, *L. R.*, 2 *C. P.* 631; *Stubley v. L. & N. W. R. Co.*, *L. R.*, 1 *Ex.* 13; *Stapley v. L. B. & S. C. R. Co.*, *L. R.*, 1 *Ex.* 21; *Cliff v. Mid. R. Co.*, *L. R.*, 5 *Q. B.* 258; *Ellis v. G. W. R. Co.*, *L. R.*, 9 *C. P.* 551.

Where Contributory Negligence no Excuse. Sub-rule 1.—*If the defendant might, by the use of ordinary care, have avoided the consequences of the plaintiff's mere negligence, the plaintiff is to recover.*

The law on this point is thus summarized by Willes, J.: "If both parties were equally to blame, and the accident the result of their joint negligence, the plaintiff could not be entitled to recover; if the negligence and default of the plaintiff was in any degree the proximate cause of the damage he could not recover, however great may have been the negligence of the defendant; but if the negligence of the plaintiff was only remotely connected with the accident, then the question is whether the defendant might not by the exercise of ordinary care have avoided it" (*Tuff v. Warman*, 27 *L. J.*, *C. P.* 322).

(1) Therefore, where the plaintiff left his ass with its legs tied in a public road, and the defendant drove over it, and killed it, he was held to be liable; for he was bound to drive carefully, and circumspectly, and had he done so he might readily have avoided driving over the ass (*Davies v. Mann*, 10 *M. & W.* 549).

(2) So, where the plaintiff was a passenger on an omnibus, which was racing with the defendant's

omnibus, and in trying to avoid a cart a wheel of the defendant's omnibus came in contact with a step of the omnibus on which the plaintiff was riding, which caused the latter to swing towards the curb-stone, and the speed rendering it impossible to pull up, the seat on which the plaintiff sat struck against a lamp-post and he was thrown off: Held, that the jury were properly directed that the defendant was liable (*Rigby v. Hewitt*, 5 *Ex.* 247).

(3) The plaintiff, a passenger on board a steamboat, was injured by the falling of an anchor, caused by the defendant's steamboat striking the other steamboat. It was no defence to say that the accident arose in part from the negligent stowage of the anchor, or that the plaintiff was in a part of the vessel he ought not to have been (*Greenland v. Chaplin*, 5 *Ex.* 243).

Contributory Negligence in Infants.

Sub-rule 2.—*It was formerly thought that where the plaintiff was a child of tender years, it was no defence to an action of negligence to prove that he himself had contributed to his injury (Lynch v. Nurdin, 1 Q. B. 29); but it seems to be now clearly settled that the principle of contributory negligence applies to all cases, whether the plaintiff can be considered of an age to know the nature of the act he is doing, or otherwise (Singleton v. Eastern Counties R. Co., 7 C. B., N. S. 287; Abbot v. McFie, Hughes v. McFie, 8 H. & C. 744; 33 L. J., Ex. 177).*

So, where the defendant exposed in a public place for sale, unfenced and without superintendence, a machine which might be set in motion by any

passer-by, and which was dangerous when in motion, and the plaintiff, a boy four years old, by the direction of his brother, seven years old, placed his finger within the machine, whilst another boy was turning the handle which moved it, and his fingers were crushed: Held, that the plaintiff could not maintain any action for the injury (*Mangan v. Atterton*, *L. R.*, 1 *Exc.* 239).

But it appears that what would amount to contributory negligence in a grown-up person may not be so in a child of tender years (per Kelly, C. B., *Lay v. M. R. Co.*, 34 *L. T.* 30).

Liability of the Owner of Dangerous Animals. RULE 28. — If an animal is known to be likely to do harm, or to possess a savage disposition, the owner thereof is answerable for any injury he may commit, and that, too, though he has done his best to secure his safe keeping. In other words, he who keeps an animal of the above description (*May v. Burdett*, 9 *Q. B.* 101), knowing it to be so, does it at his peril (*Cox v. Burbidge*, 13 *Com. B.*, *N. S.* 430).

If the animal is by nature dangerous, no actual knowledge of its previous disposition is necessary, but if the animal is naturally domestic then actual knowledge of his fierceness must be proved (*R. v. Huggins*, 2 *Ld. Raym.* 1583). See also *Saunders on Negli-*

gence, p. 99, where the whole subject is very ably discussed.

(1) It is not necessary, in order to sustain an action against a person for negligently keeping a ferocious dog, to show that the animal has actually bitten another person before it bit the plaintiff; it is enough to show that it has, to the knowledge of its owner, evinced a savage disposition, by attempting to bite (*Worth v. Gilling*, *L. R.*, 2 *C. P.* 685). It has been held that, if the owner of a dog appoints a servant to keep it, the servant's knowledge of the animal's disposition is the knowledge of the master (*Baldrin v. Casella*, *L. R.*, 7 *Ex.* 325). But where the complaint is made to a servant, who has no control over the defendant's business, nor of his yard where his dog was kept, nor of the dog itself, the knowledge of the servant would not necessarily be that of the master (*Stiles v. The Cardiff Steam Navigation Co.*, 33 *L. J.*, *Q. B.* 310).

(2) But where, in order to fix the defendant with knowledge of the ferocious nature of his dog, which had bitten the plaintiff, two persons, who had upon previous occasions been attacked by it, were called to prove that they had gone to the defendant's public-house, and made complaint to two persons who were behind the bar serving customers, and that one of them had also complained to the barmaid, but there was no evidence that these complaints were communicated to the defendant, nor was it shown that either of the two men spoken to, had the general management of the defendant's business, or had the

care of the dog: Held (Brett, J., dissenting), that there was evidence of scienter to go to the jury (*L. R.*, 9 *C. P.* 647).

Exception. By 28 & 29 Vict. c. 60, s. 1, a scienter of a dog's disposition, who has injured sheep or cattle, need not be proved. It has been held that horses are to be included under the term cattle (*Wright v. Pearson*, *L. R.*, 4 *Q. B.* 582. For further cases on the subject of keeping dangerous animals, see *Brook v. Copeland*, 1 *Esp.* 302; *Gladman v. Johnson*, 36 *L. J.*, *C. P.* 150).

Lord Campbell's Act. Previously to this Act, no action could be maintained by the representatives of a person who had been killed by the negligence of another. The maxim *Actio personalis moritur cum personâ*, strictly applied, and the right of action was held to die with the person. By sect. 1 of this Act, the law is now altered, and it is thereby enacted—

RULE 29.—Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person in-

jured, and although the death shall have been caused under such circumstances as amount in law to a felony (9 & 10 Viet. c. 92, s. 1).

Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death, to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct (sect. 2).

Not more than one action shall lie for the same cause of complaint, and every such action shall be commenced within twelve calendar months after the death of such deceased person (sect. 4).

Where there is no executor or administrator, as above stated, or if there is such executor or administrator, but no action is brought within six months by him, the action may be brought in the name or names of all

or any of the persons for whose benefit the personal representative would have sued (27 & 28 Vict. c. 95, s. 1).

In respect to actions brought under the provisions of this statute, the following points must be remembered—

(1) The personal representatives (or should they not sue, the parties mentioned in the last clause of the rule) can only maintain the action in those cases in which, had the deceased lived, he himself could have done. So, if the deceased had been guilty of such contributory negligence as would have barred him from succeeding, those claiming as his representatives can stand in no better position (*Pym v. G. N. R. Co.*, 4 B. & S. 396).

(2) Every such action must be brought for the benefit of the wife, husband, parent and child of the deceased.

The word *parent* shall include a grand-parent and a step-parent. The word *child*, a grand-child and a step-child, but not a bastard (*Dickinson v. N. E. R. Co.*, 2 Hurl. & Coll. 735).

The jury may proportion the damages amongst these persons in such shares as they may think proper.

(3) The persons for whose benefit the action is brought must have suffered some pecuniary loss by the death of the deceased (*Franklin v. S. E. R. Co.*, 3 Hurl. & N. 211).

By the expression "*pecuniary loss*" is meant "some substantial detriment in a worldly point of view." So, loss of reasonably anticipated pecuniary benefits,

loss of education or support is sufficient (*Pym v. G. N. R. Co.*, *sup.*; *Franklin v. S. E. R. Co.*, *sup.*). Loss of mere gratuitous liberality (*Dalton v. S. E. R. Co.*, 27 *L. J.*, *C. P.* 227), or to his personal property by expenses incurred in medical treatment is equally so (*Bradshaw v. Lanc. & York. R. Co.*, *L. R.*, 10 *C. P.* 89). Funeral expenses *aliter* (per Bramwell, *Osborn v. Gillet*, *L. R.*, 8 *Ex.* 88).

(4) If the deceased had obtained compensation during his lifetime, no further right of action accrues to his representatives on his decease (*Read v. G. E. R. Co.*, *L. R.*, 8 *Q. B.* 555).

(5) The death must be actually caused by the wrongful act for which compensation is sought.

(6) The action must be brought within twelve calendar months after the death of the deceased.

Proof of Negligence. RULE 30.—As a general rule the onus of proving negligence is thrown upon the plaintiff (*Hammack v. White*, 11 *C. B.*, *N. S.* 588; *Toomey v. L. & B. R. Co.*, 3 *C. B.*, *N. S.* 146).

Exception. Where, however, a thing is solely under the management of the defendant or his servants, and the accident is such as, in the ordinary course of events, does not happen to those having the management of such things, and use proper care, it affords, *prima facie*, evidence of negligence (*Scott v. London Dock Co.*, 34 *L. J.*, *Ex.* 220; *Byrne v. Boodle*, 2 *Hurl. & Coll.* 722).

Duties of Judge and Jury in case of Negligence. RULE 31.—Whether there is *reasonable* evidence to be left to the jury, of negligence occasioning the injury complained of, is a question for the judge. It is for the jury to say whether, and how far, the evidence is to be believed (*Met. R. Co. v. Jackson, L. R., 8 H. L. 193*).

That is to say, the judge should not leave the case to the jury merely because there is a *scintilla* of evidence, but should rather decide whether there is *reasonable* evidence of negligence, and then leave it to the jury to find whether the facts which afford that reasonable evidence are true. The law is thus summarized in the above case, important alike for the high tribunal before which it was heard, and the recent date of its decision. “The judge has a certain duty to discharge, and the jurors have another and a different duty. The judge has to say whether any facts have been established by evidence from which negligence *may* be reasonably inferred; the jurors have to say whether from those facts, when submitted to them, negligence *ought* to be inferred. It is, in my opinion, of the greatest importance in the administration of justice, that these separate functions should be maintained, and should be maintained distinct. It would be a serious inroad on the province of the jury, if, in a case where there are facts from which negligence may reasonably be inferred, the judge were to withdraw the case from the jury, upon the ground that in his opinion negligence ought not

to be inferred. And it would place in the hands of the jurors a power which might be exercised in the most arbitrary manner, if they were at liberty to hold that negligence might be inferred from any state of facts whatever. To take the instance of actions against railway companies: a company might be unpopular, unpunctual and irregular in its service, badly equipped as to its staff, unaccommodating to the public, notorious, perhaps, for accidents occurring on the line, and when an action was brought for the consequences of an accident, jurors, if left to themselves, might, upon evidence of general carelessness, find a verdict against the company in a case where the company was really blameless. It may be said that this would be set right by an application to the court in banco, on the ground that the verdict was against evidence; but it is to be observed that such an application, even if successful, would only result in a new trial. And on a second trial, and even on subsequent trials, the same thing might happen again."

CHAPTER VII.

OF ADULTERY AND SEDUCTION.



SECTION I.

Adultery.

Nature of. Adultery is the having criminal intercourse with the wife or husband of another. As between man and wife the law under certain conditions gives a remedy by divorce, but of this it is not my intention here to treat. It also gives to an injured husband a further remedy.

Damages. RULE 32.—A husband may in a petition to the Divorce Division of the High Court claim damages from any person on the ground of his having committed adultery with his (the petitioner's) wife (20 & 21 Vict. c. 85, s. 33).

Before the passing of the above Act the remedy which a husband had against the seducer of his wife was an action of criminal conversation, or "*crim. con.*" as it was usually called. That action is, however, now abolished, and the remedy indicated in the preceding rule substituted in its stead.

By sect. 33 of the same Act the court is empowered to direct in what way the damages obtained shall be applied.

The usual course is, first, to allow the petitioner his costs, and, then, to settle the residue on the wife (while she remains chaste) and children, the wife taking the interest during her life, and the children taking the principal after her death (*Mayne on Damages*, 386; *Latham v. Latham and Gethin*, 30 *L. J.*, *P. M. & A.* 43; *Clarke v. Clarke*, 31 *L. J.*, *P. M. & A.* 61).

The court has, however, entire discretion over the application of the damages, and, accordingly, where it was proved, on the hearing of the petition, that there had been no issue of the marriage, and that the respondent was living with the co-respondent, the court made the order for the payment of damages assessed against the co-respondent part of the decree *nisi*, instead of postponing it until the decree absolute (*Evans v. Evans*, *L. R.*, 1 *P. & D.* 36).

Mitigation of Damages. It is obvious that it is impossible to assess the damages in the case of adultery according to any scale calculated on the ground of giving compensation. It is in fact a wrong for which no adequate compensation can be given. The damages are therefore more properly regarded as in their nature penal, and accordingly vary very much according to more or less heinous circumstances of each case, in accordance with Rule 23, Part 1.

Sub-rule.—*The amount of the damages depends upon*

the husband's circumstances and conduct, the terms upon which he and his wife lived together, and the wife's general character (Ad. 899).

(1) Thus evidence of the wife's adultery with other men before the adultery with the co-respondent, is admissible in reduction of damages, as showing that the petitioner has lost but a worthless wife (*Winter v. Henn*, 4 C. & P. 498; *Foster v. Foster*, 33 L. J., P. & M. 150, n.).

(2) And so is evidence that the marriage was kept secret, and that the defendant did not know of it (*Calcraft v. Earl of Harborough*, 4 C. & P. 501).

(3) So also are letters from the respondent to the co-respondent enticing him to commit the adultery (*Elsam v. Farewell*, 2 Esp. 562).

(4) So, also, where the husband and wife are living apart in different families, for their mutual convenience (as opposed to a total separation), the damages may be thereby reduced (*Edwards v. Crook*, 4 Esp. 39).

Exceptions. A petitioner will not be entitled to recover if he has been a party to his own dishonour, either by giving his wife a general licence to conduct herself as she pleased with men generally, or by consenting to the particular adultery with the co-respondent, or by having permanently and totally given up all advantage to be gained from her society (*Alderson, B., Winter v. Henn*, 4 C. & P. 498), or by condoning the adultery (*Morris v. Morris*, 30 L. J., M. 111).

Thus encouraging a wife to live as a prostitute, is

a bar to damages for adultery with her (*Cibber v. Sloper*, cited 4 T. R. 655).

Such is a brief exposition of the law relating to a husband's remedies against the seducer of his wife. With regard to matrimonial wrongs as between husband and wife, they do not come within the scope of this work, being in my opinion certainly not torts, more probably wrongs *ex contractu*, but still more probably wrongs *sui generis* and *unique*.



SECTION 2.

Seduction and Injuries to Services.

Whence arising. An action lies by a master or parent against a person who deprives him of the services of his child or servant; and although this usually occurs through the debauching of such child or servant, yet it is by no means confined to that offence, for it equally lies against one who merely entices a servant away from his master, the gist of the action being the loss of service caused by the defendant's wrongful act.

RULE 33.—Every person designedly (1) procuring a servant to depart from the master's service during the stipulated period of service, or (2) harbouring such servant, after quitting the master, during such period, is liable to an action (*Lumley v. Gye*, 2 Ell. & Bl. 224; *Blake v. Langton*, 2 T. R. 221).

Thus, if I employed (against the will of his master) an apprentice or servant before the expira-

tion of his term of service, I should be liable, for by so doing I should be affording him the means of keeping out of his master's service.

Contract of Service when implied. Sub-rule 1.—*In order to support an action for enticing away the plaintiff's servant, it is sufficient if a contract of service can be implied from the relation between the plaintiff and the alleged servant.*

Thus, in *Eccles v. Watton* (L. R., 2 C. P. 615), the daughter of the plaintiff (a publican), who lived with him and acted as his barmaid, but without any express contract or wages, was induced by the defendant to leave her father's house: it was held, that the relation of master and servant might be implied from these circumstances, and that it matters not whether the service is at will or for a fixed period.

Sub-rule 2.—*If the defendant has gained anything from the servant's labour, the master may recover it* (*Foster v. Stewart*, 3 M. & S. 201).

It must be noticed that if the master recover damages from the servant for leaving his service, he cannot, after that, bring another action against a third party for unlawfully enticing that servant to do so, or for keeping him in his employment after notice (*Bird v. Randall*, 3 Burr. 1345; *Add.* 962).

Seduction and debauching of Daughter.
RULE 34.—An action for seduction cannot be maintained without proof of liability to service, and it is not sufficient to show that

the plaintiff has incurred expense through the confinement of the girl; but it is not necessary to prove an actual contract or payment of wages (*Sutterthwaite v. Dewhurst*, 5 *East*, 47 n.; *Bennet v. Allcott*, 2 *T. R.* 166).

(1) But small services suffice, such as milking, or even making tea (*Bennet v. Allcott*, *supra*; *Carr v. Clark*, 2 *Chit. R.* 261).

(2) Where the daughter lived at, and assisted in the duties of, the house from six in the evening until seven in the morning, and the rest of the day was employed elsewhere: it was held sufficient evidence of service (*Rist v. Taux*, 32 *L. J.*, *Q. B.* 387); and where the daughter is a *minor* living with her father, service will be presumed (*Harris v. Butler*, 2 *M. & W.* 542).

(3) But where the daughter at the time of the seduction is acting as housekeeper to another person, the action will not lie (*Dean v. Peel*, 5 *East*, 45); not even when she partly supports her father (*Manley v. Field*, 29 *L. J.*, *C. P.* 79).

(4) The plaintiff's daughter, being under age, left his house and went into service. After nearly a month, the master dismissed her at a day's notice, and the next day, on her way home, the defendant seduced her: it was held, that as soon as the real service was put an end to by the master, whether rightfully or wrongfully, the girl intending to return home, the right of her father to her services revived, and there was, therefore, sufficient evidence of service

to maintain an action for the seduction (*Terry v. Hutchinson*, *L. R.*, 3 *Q. B.* 599).

(5) When the child is only absent from her father's house on a temporary visit, there is no termination of her services, providing she still continues, in point of fact, one of his own household (*Griffiths v. Teetjen*, 15 *C. B.* 344).

Relation of Master and Servant at time of Seduction. Sub-rule.—*The relation of master and servant must exist at the time of the seduction* (*Darics v. Williams*, 10 *Q. B.* 725), and it would appear, also, that the confinement or illness of the girl must have happened while she was in the plaintiff's service.

Thus, the plaintiff's daughter was in service as a governess, and was seduced by the defendant whilst on a three-days' visit, with her employer's permission, to the plaintiff her mother. During her visit she gave some assistance in household duties. At the time of her confinement she was in the service of another employer, and afterwards returned home to her mother: Held, that there was no evidence of service at the time of the seduction. And also by Kelly, C. B., and Martin and Bramwell, BB., that the action must also fail on the ground that the confinement did not take place whilst the daughter was in the plaintiff's service (*Hedges v. Tagg*, *L. R.*, 7 *Ex.* 283).

Death caused by Seduction. In this case, probably no action could be maintained, on the

ground that the "*Actio personalis moritur cum persona*" (*Osborn v. Gillet*, *L. R.*, 8 *Ex.* 88).

Misconduct of Parent. RULE 35.—If the parent has introduced the daughter to, or has encouraged profligate or improper persons, or has otherwise courted his own injury, he has no ground of action (*Ad.* 906).

Thus, where the defendant was received as the daughter's suitor, and it was afterwards discovered by the plaintiff that he was a married man, notwithstanding which he allowed the defendant to continue to pay his addresses to his daughter on the assurance that the wife was dying, and the defendant seduced the daughter: it was held, that the plaintiff had brought about his own injury, and had no ground of action (*Reddie v. Scoolt*, 1 *Peake*, 316).

Who may bring the Action. RULE 36.—Any person who at the time of the seduction, and, as shown above, at the time of the illness accruing therefrom, stands in the position of father (or mother) and master, or guardian and master, or master only, may bring the action (*Ad.* 906).

Damages. Although the gist of the action is loss of service, yet the law somewhat inconsistently ordains that—

RULE 37.—Damages may be given for the loss which the plaintiff has sustained of the society and comfort of his child and by the dishonour he has received and the anxiety and distress which he has suffered (*Bedford v. McKnown*, 3 *Esp.* 120; *Terry v. Hutchinson*, *L. R.*, 3 *Q. B.* 599).

The plaintiff may recover any expenses he has been put to by his daughter's or servant's illness, as, for instance, for the medical assistance he has been obliged to procure.

Aggravated Damages. Sub-rule 1. — *Where more than ordinarily base methods have been employed by the seducer, the damages may be aggravated on that account.*

Thus if he make advances under the guise of matrimony, and being civilly received by the plaintiff, repays his kindness with this worst of insults, the damages will properly be exemplary (see judgt. *Tulledge v. Wade*, 3 *Wils.* 18).

Exception. But a promise to marry is no aggravation, the breach of it being a distinct ground of action, having an appropriate remedy.

Mitigated Damages. Sub-rule 2.—*The defendant may show the loose character of the daughter in mitigation of damages* (*Id.* 909; *Rose*, 799).

Thus the defendant may call witnesses to prove that they have had sexual intercourse with the girl previously to the seduction (*Eager v. Grimwood*, 16 *L. J., Ex.* 236; *Verry v. Watkins*, 7 *C. & P.* 308).

The damages for seduction are generally very large and exemplary, and the court will seldom interfere with them on the ground of being excessive.

Limitation. An action for seduction, being an action of trespass on the case, must be commenced within six years (see 21 *Jac.* 1, *c.* 16, *s.* 3).

CHAPTER VIII.

OF TRESPASS TO LAND AND DISPOSSESSION.

SECTION I.

Of Trespass quare clausum fregit.

Definition. Trespass *quare clausum fregit* is a trespass committed in respect of another man's land, by entry on the same without lawful authority (3 *Steph. Comm.*, ch. 8).

What constitutes. RULE 38.—Every unauthorized entry upon or direct interference with another's land is a trespass, for which an action lies without proof of actual damage.

(1) Thus driving nails into another's wall, or placing objects against it, are trespasses (*Laurence v. Olve*, 1 *Stark.* 22; *Gregory v. Piper*, 9 *B. & C.* 591).

(2) So it is a trespass to allow one's cattle to stray on to another's land, unless there is contributory misconduct on his part, such as keeping in disrepair a hedge which he is bound by prescription or otherwise to repair (*Lee v. Riley*, 34 *L. J.*, *C. P.* 212); but if no such duty to repair exists the owner of cattle is liable for their trespasses even upon uninclosed land (*Boyle v. Tammie*, 6 *B. & C.* 337), and for all naturally resulting damage.

(3) Where one has authority to use another's land for a particular purpose any user going beyond the authorized purpose is a trespass. Thus, where the lord of a manor entitled by custom to convey under the plaintiff's land (by means of subterranean passages) minerals *got within the manor*, brought thereunder minerals from mines without the manor, it was held to be a trespass (*Eardley v. Lord Granville*, 24 *W. R.* 528).

(4) So if a person allow substances which he has brought on his land to escape into his neighbour's, an action lies without proof of negligence in the keeping of them.

Thus one bringing or collecting water upon his land, does so at his peril, for if it escapes and injures his neighbour, he is liable, however careful he may have been (*Fletcher v. Rylands*, *L. R.*, 3 *II. L.* 330; *Smith v. Fletcher*, *L. R.*, 9 *Ex.* 64), unless the escape was caused by something quite beyond the possibility of his control, as the act of God or malice of a third party (*Nichols v. Marsland*, *L. R.*, 2 *Ex. Div.* 1); but where the water is naturally upon the land, the owner is only liable for negligence in keeping it.

Distress Damage feasant. It is convenient to mention here, a peculiar remedy of landowners for trespasses committed by cattle, viz., by seizing the animals whilst trespassing, and detaining them until compensation is made. This is not, however, available where animals are being actually tended; in such case the person injured must bring his action. A somewhat analogous remedy is allowed in the case

of animals *feræ naturæ* reared by a particular person. In such cases the law, not recognizing any property in them, does not make their owner liable for their trespasses, but any person injured, may shoot or capture them while trespassing. Thus I may kill pigeons coming upon my land, but I cannot sue the breeder of them (*Hannan v. Mockett*, 2 B. & C. 939, per Bayley, J.).

Exceptions. (1) *Retaking Goods.*—If one takes another's goods on to his land, the latter may enter and retake them (*Patrick v. Colerick*, 3 M. & W. 485).

(2) *Cattle.*—If cattle escape on to another's land through the non-repair of a hedge which the latter is bound to repair, the owner of the cattle may enter and drive them out (see *Fahlo v. Ridge*, *Yelv.* 74).

(3) *Distraining for Rent.*—So a landlord may enter his tenant's house to distrain for rent, or an officer to serve a legal process (*Keane v. Reynolds*, 2 E. & B. 748); but he may not break open the outer door of a house, except to arrest under a warrant for felony, wounding, or breach of the peace (*Id.* 708). So in any case where the law will imply leave, an entry is lawful.

(4) *Reversioner inspecting Premises.*—A reversioner of lands may enter in order to see that no waste is being committed.

(5) *Escaping Danger.*—A trespass is justifiable if committed in order to escape some pressing danger, or in defence of goods (*Id.* 255).

(6) *Grantee of Easement.*—And the grantee of an easement may enter upon the servient tenement, in

order to do necessary repairs (*Taylor v. Whitehead*, 2 *Doug.* 745).

(7) *Public Rights*.—Land may be entered under the authority of a statute (*Beaver v. Mayor, &c. of Manchester*, 26 *L. J., Q. B.* 311), or in exercise of a public right, as the right to enter an inn, provided there is accommodation (*Dansey v. Richardson*, 3 *E. & B.* 1859).

(8) *Liberum Tenementum*.—Lastly, land may be entered on the ground that it is the defendant's. This latter, known as the plea of *liberum tenementum*, is generally pleaded in order to try the title to lands.

Trespassers ab Initio. RULE 39.—(1) Whenever a person has authority given him by law to enter upon lands or tenements for any purpose, and he goes beyond or abuses such authority by doing that which he has no right to do, then, although the entry was lawful, he will be considered as a trespasser *ab initio*. (2) But where authority is not given by the law, but by the party, and abused, then the person abusing such authority is not a trespasser *ab initio*, but must be punished for his abuse. (3) The abuse necessary to render a person a trespasser *ab initio* must be a misfeasance, and not a mere non-

feasance (*Six Carpenters' case*, 1 Sm. L. C. 132).

Thus, in the above case, six carpenters entered an inn and were served with wine, for which they paid. Being afterwards at their request supplied with more wine, they refused to pay for it, and upon this it was sought to render them trespassers *ab initio*, but without success; for although they had authority by law to enter (it being a public inn), yet the mere non-payment, being a non-feasance and not a mis-feasance, was not sufficient to render them trespassers.

Possession necessary to maintain Trespass. In order to maintain an action of trespass the plaintiff must be in the possession of the land, for it is an injury to possession rather than to title.

RULE 40.—The possession of land suffices to maintain an action of trespass against any person wrongfully entering upon it; and if two persons are in possession of land, each asserting his right to it, then the person who has the title to it is to be considered in actual possession, and the other person is a mere trespasser (*Jones v. Chapman*, 2 Ex. 821).

Thus a person entitled to the possession of lands or houses, cannot bring an action of trespass against a trespasser until he is in actual possession of them

(*Ryan v. Clark*, 14 Q. B. 65); but when he has once entered, he acquires the actual possession, and such possession then dates back to the time of the legal commencement of his right of entry, and he may therefore maintain actions against intermediate and then present trespassers (*Anderson v. Radcliff*, 29 L. J., Q. B. 128; *Butcher v. Butcher*, 7 B. & C. 402).

Onus of Proof of Title. Sub-rule 1. — *The onus lies upon a prima facie trespasser to show that he is entitled to enter upon land in another's possession* (*Brown v. Dawson*, 12 A. & E. 624; *Asher v. Whitlock*, L. R., 1 Q. B. 1).

Surface and Subsoil in different Owners. Where one parts with the right to the surface of land, retaining only the mines, he cannot maintain an action for trespass to the surface (*Cox v. Mousley*, 5 C. B. 549), but he may for a trespass to the subsoil, as by digging holes, &c. (*Cox v. Glue*, 17 L. J., C. P. 162); so the owner of the surface cannot maintain trespass for a subterranean encroachment on the minerals (*Reyse v. Powell*, 22 L. J., Q. B. 305), unless the surface is disturbed thereby.

Highways, &c. Sub-rule 2. — *When one dedicates a highway to the public, or grants any other easement on land, possession of the soil is not thereby parted with, but only a right of way or other privilege granted* (*Goodtitle v. Alder*, 1 Burr. 133; and *Northampton v. Ward*, 1 Wils. 114).

An action for trespasses committed upon it, as for instance, by throwing stones on to it or erecting a bridge over it, may be therefore maintained by the grantor (*Every v. Smith*, 26 *L. J.*, *Ex.* 345).

Joint Owners. RULE 41.—Joint tenants, or tenants in common, can only sue one another in trespass for acts done by one inconsistent with the rights of the other (see *Jacobs v. Senard*, *L. R.*, 5 *H. L.* 464).

(1) Among such acts may be mentioned the destruction of buildings (*Cresswell v. Hedges*, 31 *L. J.*, *Ex.* 49), carrying off of soil (*Wilkinson v. Hagarth*, 12 *Q. B.* 837), and expelling the plaintiff from his occupation (*Murray v. Hall*, 7 *C. B.* 441).

(2) But a tenant in common of a coal mine may get the coal, or license another to get it, not appropriating to himself more than his share of the proceeds; for a coal mine is useless unless worked (*Job v. Potton*, *L. R.*, 20 *Eq.* 84).

Party-walls. There is also one other important case of trespass between joint owners, viz., that arising out of a party-wall.

Sub-rule.—*If one owner of the wall excludes the other owner entirely from his occupation of it, as by destroying it, or building upon it, for instance, he thereby commits*

a trespass ; but if he pulls it down for the purpose of rebuilding it, he does not (Stedman v. Smith, 26 L. J., Q. B. 314 ; Cubitt v. Porter, 8 B. & C. 257).

Continuing Trespasses. RULE 42.—Where a trespass is permanent and continuing, the plaintiff may bring his action as for a continuing trespass, and claim damages for the continuation ; and where after one action the trespass is still continued, other actions may be brought until the trespass ceases (*Bowyer v. Cook*, 4 C. B. 236).

Limitation. All actions of trespass *quare clausum fregit* must be commenced within six years next after the cause of action arose (21 Jac. 1, c. 16, s. 3).



SECTION 2.

Of Dispossession.

Definition. Dispossession or ouster consists of the wrongful withholding of the possession of land from the rightful owner.

Specific Remedy. Before the Judicature Act, 1873, the remedy for this wrong was by an action of

ejectment for the actual recovery of the land, and since that statute it is by an action claiming the recovery of the land.

Onus of Proof. It is obvious that no reasonable system of law would throw upon the *prima facie* owner of land, the burden of proving his title upon every occasion that it was called in question; and therefore it is an elementary principle, that—

RULE 43.—The claimant must recover on the strength of his own title, and not on the weakness of the defendant's (*Martin v. Struchan*, 5 T. R. 107).

Thus mere possession is *prima facie* evidence of title, until the claimant makes out a better one (*Sweetland v. Webber*, 1 Ad. & E. 119).

Sub-rule 1.—*But where the claimant makes out a better title than the defendant, he may recover the lands, although such title may not be indefeasible.*

Thus where one enclosed waste land, and died without having had twenty years' possession, the heir of his devisee was held entitled to recover it against a person who had entered upon it without any title (*Asher v. Whitlock*, L. R., 1 Q. B. 1).

Jus Tertii. A man who may not have an indefeasible title as against a third party, may yet have a better title than the actual claimant, and therefore—

Sub-rule 2.—*The defendant may set up the right*

of a third person to the lands, in order to disprove that of the claimant (*Doe d. Carter v. Bernard*, 13 Q. B. 945).

But the claimant cannot do the same, for possession is, in general, a good title against all but the true owner (*Asher v. Whitlock*, *sup.*).

Exceptions. (1) *Landlord and Tenant*.—Where the relation of landlord and tenant exists between the claimant and defendant, the landlord need not prove his title, but only the expiration of the tenancy, for a tenant cannot in general dispute his landlord's title (*Delaney v. Fox*, 26 L. J., C. P. 248), unless a defect in the title appears on the lease itself (*Saunders v. Merryweather*, 35 L. J., Ex. 115; *Doe d. Knight v. Smyth*, 4 M. & S. 347). But nevertheless he may show that his landlord's title has *expired*, by assignment, conveyance, or otherwise (*Doe d. Marriott v. Edwards*, 5 B. & Ad. 1065; *Walton v. Waterhouse*, 1 Wms. Saund. 418).

The principle does not extend to the title of the party through whom the defendant claims prior to the demise or conveyance to him. Thus where the claimant claims under a grant from A. in 1818, and the defendant under a grant from A. in 1824, the latter may show that A. had no legal estate to grant in 1818 (*Doe d. Oliver v. Powell*, 1 A. & E. 531; 3 A. & E. 188).

(2) *Servants and Licensees*.—The same principle is applicable to a licensee or servant, who is estopped from disputing the title of the person who licensed him (*Doe d. Johnson v. Baytop*, 3 A. & E. 188).

Character of Claimant's Estate. Rule 44.—The claimant's title may be either legal or equitable (*seemle*), provided that he is equitably better entitled to the possession than the defendant.

Before the Judicature Act, 1873, it was a well-established rule that a plaintiff in ejectment must have the legal estate (*Doc d. North v. Webber*, 5 Scott, 189). It is submitted, however, that since that act, seeing that all branches of the High Court are to take cognizance of equitable rights, an equitable estate will be alone sufficient.

Limitation. RULE 45.—No person shall bring an action for the recovery of land or rent but within twenty years after the right to maintain such action shall have accrued to the claimant, or to the person through whom he claims (3 & 4 Will. 4, c. 27, s. 2; *Brassington v. Llewellyn*, 27 L. J., Ex. 297), and after the 31st December, 1878, no such action shall be brought but within twelve years (37 & 38 Vict. c. 57, s. 1).

Exceptions. (1) *Disability*.—Where claimants are under disability, by reason of infancy, coverture, unsound mind, or absence beyond the seas, they must bring their action within ten years after such disability has ceased; provided that no action shall be

brought after forty years from the accrual of the right (sects. 16 and 17).

After the 31st December, 1878, disability by reason of absence beyond the seas is abolished, and six years and thirty years substituted for the above-mentioned periods of ten and forty years (37 & 38 Vict. c. 57, ss. 4, 3 and 5).

(2) *Acknowledgment of Title*.—When any person in possession of lands or rents shall have given an acknowledgment in writing, and signed by him, to the person entitled to such lands or rents, or to his agent, of his title, then the possession of the person by whom such acknowledgment shall have been made shall be deemed to be the possession of the person to whom such acknowledgment shall have been given, and the right of such last-mentioned person shall be taken to have accrued at and not before the date at which such acknowledgment was made, and the statute shall begin to run as from that date (*Ley v. Peter*, 27 L. J., Ex. 239).

(3) *Ecclesiastical Corporations*.—The period in the case of ecclesiastical and eleemosynary corporations is sixty years (3 & 4 Will. 4, c. 27, s. 29).

Commencement of Period of Limitation.

Sub-rule 1.—*The right to maintain ejectment accrues at the time of dispossession or discontinuance of possession of the profits or rent of lands, or of the death of the last rightful owner (see sect. 3), or in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time of which the same shall have become an estate or interest in possession, by*

the determination of the particular estate, notwithstanding the person claiming such land or rent, or some person through whom he claims, was at any time previously to the creation of the estate or estates which shall have determined, in the possession or receipt of the profits of such land, or receipt of the rents (37 & 38 Vict. c. 57, s. 2).

It seems that discontinuance does not mean mere abandonment, but rather an abandonment by one followed by actual possession by another (see *Smith v. Lloyd*, 23 L. J., Ex. 194; *Id.*, *Cup. VI. Sect. 2*).

Thus where A. grants the surface of lands to B., and the mines thereunder to C., and C. does not enter for more than forty years, yet his right is not barred; for although he has not been in possession for forty years, yet there has been no adverse possession by another (see *Smith v. Lloyd*, 9 Ex. 571).

Occupation of Servants. As we have seen, the occupation of a servant is that of his master; therefore where a landowner allows his gardener to use a cottage rent free, such permission is not a discontinuance of possession, and no title can be gained by the gardener by twenty years' possession (*Id.* 262); and so allowing another from kindness to occupy one's tenement, is not necessarily a discontinuance if one continues to exercise proprietary rights, as of repairing or planting, &c. (*Turner v. Doc*, 9 M. & W. 645).

Continual Assertion of Claim. Sub-rule 2.
—*No defendant is deemed to have been in possession of*

land, merely from the fact of having entered upon it ; and, on the other hand, a continual assertion of claim preserves no right of action (sects. 10 and 11).

Therefore a man must actually bring his action within the time limited ; for mere assertion of his title will not preserve his right of action after adverse possession for the statutory period.

CHAPTER IX.

OF PRIVATE NUISANCES AFFECTING REALTY.

Of Easements and Servitudes. In order that the student may approach the subject of private nuisances with intelligence, it is in the first place necessary that he should understand the elements of the law relating to easements and servitudes.

Definitions. A servitude is a duty or service which one piece of land is bound to render, either to another piece of land, or to some person other than its owner. Where the servitude gives a mere right of user, without any right to take any of the mines or crops or other profits of the land, such right is called *an easement*. Where, on the other hand, it confers the right to any of the profits of the land, it is called a *profit à prendre*. Easements enjoyed in respect of the ownership of particular lands are called easements appurtenant, and the property to which the right is attached is called the dominant tenement, that over which the right is exercised being denominated the servient tenement. Easements enjoyed irrespectively of the ownership of land are called easements in gross.

Creation of Servitudes. Servitudes are either natural or conventional. Natural servitudes are such

as are necessary and natural adjuncts to the properties to which they are attached, and they apply universally throughout the kingdom. Conventional servitudes, on the other hand, are not universal, but must always arise either by custom, prescription or grant; and in the case of profits *à prendre*, it is said that they can take their rise either by prescription or grant only, but this doctrine is now much modified, particularly in the case of commonable rights.

Title to Servitudes. As to what kind and what length of user will give a right to the various kinds of servitudes known to our law, and as to what servitudes are governed by the common law doctrines of prescription and what by the Prescription Act, all these are matters of real property law, for which I must refer the reader to works on that subject; but wherever I shall hereafter speak of a servitude imposed, or an easement or profit *à prendre* gained, by custom or prescription, I must be understood to mean *properly* imposed or gained, in accordance with the doctrines of the law in reference to such matters of title.

Definition. “A private nuisance,” says Blackstone, “is anything done to the hurt or annoyance of the lands, tenements or hereditaments of another not amounting to trespass.” It may either affect corporeal property or incorporeal rights.

RULE 46.—Every person should so use his

property and rights, as not to cause injury to another.

(1) Thus a man has an undoubted right to get minerals lying in and under his land, but in doing so he must not mine or excavate so near to the land of his neighbour, as to disturb such land and cause it to subside; for there is a natural servitude imposed upon every owner of land to afford lateral support to the adjacent land of his neighbour in its original state, and the withdrawal of such support is a nuisance (*Humphreys v. Brogden*, 12 Q. B. 739).



SECTION I.

Nuisances to Corporeal Hereditaments.

RULE 47.—Any act or omission of a person, whereby sensible injury is caused to the property of another, or whereby the ordinary physical comfort of human existence in such property is *materially* interfered with, is actionable.

(1) *Fumes*. Thus, in the case of *Tippings v. St. Helens' Smelting Co.* (L. R., 1 Ch. 66), the fact that the fumes from the company's works killed the plaintiff's shrubs, was held sufficient to support the action; for the killing of the shrubs was an injury to the property.

(2) *Noisy Trade*. So, too, it was said, in *Crump v. Lambert* (L. R., 3 Eq. 409), that smoke unaccompanied with noise, or with noxious vapour, noise

alone, and offensive vapours alone, although not injurious to health, may severally constitute a nuisance; and that the material question in all such cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence.

(3) And so, again, in *Walter v. Selfe* (4 D. G. & Sm. 322), Vice-Chancellor Knight Bruce said: "Both on principle and authority, the important point next for decision may properly, I conceive, be put thus: ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people?" (and see per Kindersley, V.-C., in *Soltan v. De Held*, 2 Sim. N. S. 133; and per Selwyn and Giffard, L.JJ., in *Inchbald v. Robinson*, L. R., 4 Ch. 388.)

(4) *Noisy Entertainments*. So, too, the collection of a crowd of noisy and disorderly people, to the annoyance of the neighbourhood, outside grounds in which entertainments with music and fireworks are being given for profit, is a nuisance, even though the entertainer has excluded all improper characters, and the amusements have been conducted in an orderly way (*Walker v. Brewster*, L. R., 5 Eq. 25; and see also *Inchbald v. Robinson*; and *Same v. Barrington*, L. R., 4 Ch. 388).

(5) So, it is apprehended, that the letting off of

rockets, and the establishment of a powerful band of music playing twice a week for several hours within one hundred yards of a dwellinghouse, are nuisances (*Ib.*)

(6) *Other Examples.* Other examples of nuisance to corporeal hereditaments are overhanging eaves from which the water flows on to another's property (*Battishill v. Reed*, 25 *L. J.*, *C. P.* 290); or overhanging trees, or pigstys, creating a stench, erected near to another's house (*Rosc.* 655); and it would seem that noisy dogs preventing the plaintiff's family from sleeping are nuisances, if the jury find that such discomfort is caused, although, where the jury find that no serious discomfort has arisen, the court will not interfere (*Street v. Guggrell*, *Selwyn's N. P.*, 13th ed. 1090; and see *Rosc.* 655).

Reasonableness of Place. Sub-rule 1.—*Where an act is proved to interfere with the comfort of an individual, so as to come within the legal definition of a nuisance, it cannot be justified by the fact that it was done in a reasonable place (Bamford v. Turnley, 31 L. J., Q. B. 286). But what would constitute a nuisance in one locality may not be one in another (St. Helens' Smelting Co. v. Tippings, infra).*

(1) The spot selected may be very convenient for the defendant, or for the public at large, but very inconvenient to a particular individual who chances to occupy the adjoining land, and proof of the benefit to the public, from the exercise of a particular trade in a particular locality, can be no ground for depriving an individual of his right to compensation in respect of the particular injury he has sustained from it.

And so, where the defendant made bricks upon his own land for the purpose of building thereon, and every precaution had been taken to prevent a nuisance, but a nuisance was actually caused to the plaintiff's dwellinghouse: here, although the jury found that the act complained of was merely a reasonable use of his own land by the defendant, and found a verdict for him, yet the majority of the court set that verdict aside (*Ib.*).

(2) In *St. Helens' Smelting Co. v. Tippings* (11 H. L. C. 650), Lord Westbury said: "In matters of this description, it appears to me that it is a very desirable thing, to mark the difference between an action brought for a nuisance upon the ground that the alleged nuisance produces material injury to the property, and an action brought for a nuisance on the ground that the thing alleged to be a nuisance is productive of sensible personal discomfort. With regard to the latter,—namely, the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves,—whether that may or may not be denominated a nuisance, must undoubtedly depend greatly on the circumstances of the place where the thing complained of actually occurs. If a man lives in a town, it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in the immediate locality, which are actually necessary for trade and commerce, and also for the enjoyment of property, and for the benefit of the inhabitants of the town, and the public at large.

If a man lives in a street where there are numerous shops, and a shop is opened next door to him which is carried on in a fair and reasonable way, he has no ground of complaint because, to himself individually, there may arise much discomfort from the trade carried on in that shop. But when an occupation is carried on by one person in the neighbourhood of another, and the result of that trade or occupation or business is a material injury *to property*, then unquestionably arises a very different consideration. I think that in a case of that description, the submission which is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbours, would not apply to circumstances, the immediate result of which is sensible injury to the value of the property." And Lord Cranworth said (referring to a case which he had tried when a Baron of the Exchequer): "It was proved incontestably that smoke did come, and in some degree interfere with a certain person; but I said, 'You must look at it, not with a view to the question whether abstractedly that quantity of smoke was a nuisance, but whether it was a nuisance to a person living in the town of Shields.'"

Coming to the Nuisance. Sub-rule 2.—*It is no answer to an action for nuisance that the plaintiff knew that there was a nuisance, and yet went and lived near it (Hole v. Barlow, 27 L. J., C. P. 208).*

Or in the words of Mr. Justice Byles in the above case, "It used to be thought that if a man knew that

there was a nuisance and went and lived near it he could not recover, because it was said it is he that goes to the nuisance, and not the nuisance to him. That, however, is not law now." The justice of this is obvious from the consideration, that, if it were otherwise, a man might be wholly prevented from building upon his land if a nuisance was set up in its locality, because the nuisance might be harmless to a mere field, and therefore not actionable, and yet unendurable to the inhabitants of a dwellinghouse.

Sub-rule 3.—*The right to carry on a noisome trade in derogation of the rights of another may be gained by custom, grant, or prescription, but not the right to carry on a trade which creates a public nuisance (see Elliotson v. Feetham, 2 Bing. N. C. 134; and see Flight v. Thomas, 10 A. & E. 590).*



SECTION 2.

Nuisances to Incorporeal Hereditaments.

Disturbance of Easements of Support.

RULE 48.—Subject to any express grant, reservation, covenant, or inconsistent right gained by prescription (*Rowbotham v. Wilson*, 8 H. L. C. 348; *Murchie v. Black*, 34 L. J., C. P. 337), it is well established, that where the surface of land belongs to one person, and the subjacent soil and minerals to another, the latter is burdened with a natural servitude to support the former (*Humphreys*

v. *Brogden*, 12 Q. B. 739), and also that the owner of land is entitled to the performance of a similar servitude of lateral support by the *adjacent* land (*Bonomi v. Backhouse*, 27 L. J., Q. B. 378; 28 *ib.* 378); but these easements only extend to the land in its natural and unencumbered state, and not with the additional weight of buildings upon it. In order to maintain an action for a nuisance affecting such an easement, some appreciable damage must be shown (*Smith v. Thackerah*, L. R., C. P. 564).

(1) *Humphreys v. Brogden* was an action by the occupier of the surface of land, for negligently and improperly, and without leaving any sufficient pillars and supports, and contrary to the custom of mining in the country, working the subjacent minerals, whereby the surface gave way. It was proved at the trial, that the plaintiff was in occupation of the surface, and the defendant, of the subjacent minerals, but there was no evidence how the occupation of the superior and inferior strata came into different hands. The surface was not built upon. The jury found that the defendants had worked the mines carefully and according to custom, but without leaving sufficient support for the surface. Upon this finding, it was held that the plaintiff was entitled to have the verdict entered for him, for that of common right the owner of the surface is entitled to support from the subjacent strata, and if the owner of the minerals

removes them, it is his duty to leave sufficient support for the surface in its natural state. And Lord Campbell, in delivering the judgment of the court, said: "The right to *lateral* support from adjoining soil is not, like the support of one building upon another, supposed to be gained by grant, but is a right of property passing with the soil; if the owner of two adjoining closes conveys away one of them, the alienee, without any grant for that purpose, is entitled to the lateral support of the other close the very instant when the conveyance is executed, as much as after the expiration of twenty years or any longer period. *Pari ratione*, where there are separate freeholds, from the surface of the land and the mines belonging to different owners, we are of opinion that the owner of the surface, while unincumbered by buildings and in its natural state, is entitled to have it supported by the subjacent mineral strata. Those strata may, of course, be removed by the owner of them, so that a sufficient support is left; but if the surface subsides and is injured by the removal of these strata, although the operation may not have been conducted negligently nor contrary to the custom of the country, the owner of the surface may maintain an action against the owner of the minerals, for the damage sustained by the subsidence. Unless the surface close be entitled to this support from the close underneath, corresponding to the lateral support to which he is entitled from the adjoining surface close, it cannot be securely enjoyed as property, and under certain circumstances (as where the mineral strata approach the surface and are of great thickness) it

might be entirely destroyed. We likewise think, that the rule giving the right of support to the surface upon the minerals, in the absence of any express grant, reservation or covenant, must be laid down generally, without reference to the nature of the strata, or the difficulty of propping up the surface, or the comparative value of the surface and the minerals."

(2) But where allotment commissioners, by their award, allotted land, so that some of the mines allotted to A. were situate under portions of the land allotted to B., and the persons interested executed the award, which contained a clause declaring that the proprietors agreed with each other and their heirs, that the land so allotted, should be lawfully held and enjoyed by the allottees without molestation, and without any mine owner being subject to any action for damages on account of working and getting the mines, or by reason that the lands might be "rendered uneven and less commodious to the occupiers thereof by sinking in hollows, and being otherwise defaced and injured where such mines should be worked," it was held, that this clause operated as a grant of a right to disturb the surface, and that a surface owner could not maintain any action for any such disturbance (*Roubotham v. Wilson*, 8 H. L. C. 348, and see also *Eadon v. Jeffcock*, L. R., 7 Ex. 379).

(3) And in *Smith v. Thackerah* (L. R., 1 C. P. 564) Byles, J., said: "In actions for trespass, the trespass itself is a sufficient cause of action; but in actions for indirect injuries, like the present, the judgments of the House of Lords in *Bonomi v. Backhouse* show

that there is no cause of action if there be no damage ; and I cannot distinguish between no appreciable damage to the land in its natural state, and no damage at all."

Exception.—Companies governed by the Railway Clauses Consolidation Act, 1845, do not acquire any such right to subjacent support by purchasing the surface ; and the owners of the mines may, after having given notice to the company, so as to give them the opportunity of purchasing the mines, work them with impunity, in the ordinary way (*G. W. R. Co. v. Bennett, L. R., 2 H. L. 29*). But neither will an action lie against the company for any damage suffered by the mine owner, although perhaps he may demand compensation under the act (see *Dunn v. Birm. Canal Co., L. R., 8 Q. B. 42*).

Subterranean Water. Sub-rule 1.—*An owner of land has no right at common law to the support of subterranean water (Popplewell v. Hodgkinson, L. R., 4 Ex. 248.*

Extra Weight of Buildings. Sub-rule 2.—*The owner of land may maintain an action for a disturbance of the natural right to support for the surface, notwithstanding buildings have been erected upon it, provided the weight of the buildings did not cause the injury (Brown v. Robins, 4 H. & N. 186 ; Stroyan v. Knowles, Hamer v. Knowles, 6 H. & N. 454).*

Support of Buildings. RULE 49.—The right of support for buildings, whether lateral

or subjacent, and whether of the soil upon which they stand, or of the buildings themselves, must arise out of grant or prescription (*Partridge v. Scott*, 3 M. & W. 220; *Brown v. Robins*, 4 H. & N. 186; *N. E. R. Co. v. Elliott*, 29 L. J., Ch. 808).

(1) Thus, in *Partridge v. Scott*, it was said that "rights of this sort, if they can be established at all, must, we think, have their origin in grant; if a man builds a house at the extremity of his land, he does not thereby acquire any easement of support or otherwise over the land of his neighbour. He has no right to load his own soil, so as to make it require the support of his neighbours, unless he has some grant to that effect." Of course such grant may be express or implied (that is, prescriptive), and it would seem to be clear, that no prescriptive right of support for buildings can be gained where the natural right of support for the unincumbered surface has been given up (*Rowbotham v. Wilson*, *sup.*).

(2) So again, as between adjoining houses, there is no obligation towards a neighbour cast by law on the owner of a house, merely as such, to keep it standing and in repair; his only duty being to prevent it from being a nuisance, and from falling on to his neighbours' property (*Chaudler v. Robinson*, 4 Ex. 163).

(3) But where, on the other hand, houses are built by the same owner, adjoining one another, and depending upon one another for support, and are afterwards conveyed to different owners, there exists,

by a presumed grant and reservation, a right of support to each house from the adjoining ones (*Richards v. Rose*, 9 *Er.* 218).

(4) And so it is said, that where adjoining houses are built by separate owners, a right of support may be gained by prescription (*Hide v. Thornborough*, 2 *C. & K.* 250; *sed quare*, *Salomon v. Vintners' Co.*, 4 *H. & N.* 585; *Angus v. Dalton*, *L. R.*, 3 *Q. B. Div.* 170).

Light and Air. RULE 50.—There is no right, *ex jure nature*, to the free passage of light and air to a house or building (2 & 3 *Will.* 4, c. 71, s. 6); but such a right may be acquired, either by grant from the contiguous proprietors, or by prescription. Where such a right has been gained, no person will be allowed to interrupt such passage, unless he can show that, for whatever purpose the plaintiff might wish to employ the light, there would be no *material* interference with it by the alleged obstruction (*Yates v. Jack*, *L. R.*, 1 *Ch.* 295; and see per Best, C. J., in *Back v. Stacey*, 2 *C. & P.* 465, and *Dent v. Auction Mart Co.*, *L. R.*, 2 *Eq.* 245, and *Robson v. Whittingham*, *L. R.*, 1 *Ch.* 442).

(1) Thus in *Yates v. Jack*, where it was contended that the plaintiff was not entitled to relief,

because, for the purposes of his *then present* trade he was obliged to shade and subdue the light, and that therefore he suffered no actual damage, Lord Cranworth said: "This is not the question. It is comparatively an easy thing to shade off a too powerful glare of sunshine, but no adequate substitute can be found for a deficient supply of daylight, and an attentive consideration of the evidence of the trade witnesses on the one side, and on the other, has led me to the conclusion, as did the evidence of the architects, that the erection of the new buildings will materially interfere with the quantity of light necessary or desirable for the plaintiffs in the conduct of their business. I desire, however, not to be understood as saying that the plaintiffs would have no right to an injunction unless the destruction of light were such as to be injurious to them in the trade in which they are now engaged. The right conferred or recognized by the statute 2 & 3 Will. 4, c. 71, is an absolute and indefeasible right to the enjoyment of the light without reference to the purpose for which it has been used. Therefore, even if the evidence satisfied me (which it does not) that for the purpose of their present business a strong light is not necessary, and that the plaintiffs will still have sufficient light remaining, I should not think the defendant had established his defence, unless he had shown, that, for whatever purpose the plaintiffs might wish to employ the light, there would be no material interference with it" (and see *Aynsley v. Glover*, *L. R.*, 18 *Eq.* 544, and 10 *Ch.* 283).

(2) And so, where ancient lights are obstructed, the fact that the owner of the building to which the ancient lights belong has himself contributed to the diminution of the light, will not in itself preclude him from obtaining an injunction or damages (*Tapling v. Jones*, 11 *H. L. C.* 290; *Arcedeckne v. Kelk*, 2 *Giff.* 683; *Straight v. Burn*, *L. R.*, 5 *Ch.* 163).

(3) So, on the other hand, an enlargement of an ancient light, although it will not enlarge the right (*Cooper v. Hubbock*, 31 *L. J.*, *Ch.* 123), does not diminish or extinguish it; and, therefore, where the owner of a building having ancient lights enlarges or adds to the number of windows, he does not thereby preclude himself from obtaining an injunction to restrain an obstruction of the ancient lights (*Aynsley v. Glover*, *sup.*).

(4) The dominant tenement must be a building; and, therefore, a person who grants a lease of a house and garden, is not precluded (under the doctrine of not derogating from his own grant) from building on open ground retained by him adjacent to the house and garden, though, by so doing, the enjoyment of the garden, as pleasure ground, is interfered with, there being no obstruction of light and air to the house (*Potts v. Smith*, *L. R.*, 6 *Eq.* 311).

Exception. Right over Grantor's Land.—A man cannot derogate from his own grant.

(1) Therefore, if one grants a house to A., but keeps the land adjoining the house in his own hands, he cannot build upon that land so as to darken the windows of the house. And if he have sold the house to one and the land to another, the latter

stands in the grantor's place as regards the house (see per Bayley, J., *Canham v. Fisk*, 2 Cr. & J. 128; *Swansborough v. Corcutry*, 9 Bing. 309; *Daries v. Marshall*, De G. & Sm. 557; *Freuen v. Phillips*, 11 C. B., N. S. 449).

(2) And so, where two separate purchasers buy two unfinished houses from the same vendor, and, at the time of the purchase, the windows are marked out, this is a sufficient indication of the rights of each, and implies a grant (*Compton v. Richards*, 1 Pr. 27; *Glare v. Harding*, 27 L. J., Ex. 286).

(3) Similarly, where two lessees claim under the same lessor, it is said that they cannot, in general, eneroach on one another's access to light and air (*Countts v. Gorham*, 1 M. & M. 396; *Jacomb v. Knight*, 32 L. J., Ch. 601); but it would seem that this statement of the law is too wide, as it is difficult to see what right the second lessee can have against the first, as no act of his can be a derogation from the second demise; and, indeed, it has been distinctly held, that where the grantor sells the land but retains the house, there is no duty upon the grantee of the land to abstain from building upon it, and the grantor cannot prevent him, for to do so would be, as much as in the preceding case, a derogation from his own grant (*White v. Buss*, 31 L. J., Ex. 283).

Estoppel in case of Disturbance in pursuance of Licence. Sub-rule.—*If the owner of the dominant tenement authorizes the owner of the servient tenement, either verbally or otherwise, to do an act of notoriety upon his land, which, when done, will affect or*

put an end to the enjoyment of the easement, and such act is done, the licensor cannot retract, but must abide by the result.

Thus where A. had a right to light and air across the area of B., and gave B. leave to put a skylight over the area, which B. did : it was held that A. could not retract his licence, although it was found that the skylight obstructed the light and air ; and Lord Ellenborough, C. J., said that at the trial he thought it very unreasonable, that after a party had been led to incur expense in consequence of having obtained a licence from another to do an act, and that licence had been acted upon, that other should be permitted to recall his licence and treat the first as a trespasser for having done that very act. That he had afterwards looked into the books on the subject, and found himself justified by the case of *Webb v. Paternoster* (*Palmer*, 71), where Haughton, J., lays down the rule, that a licence executed is not countermandable, but only when it is executory (*Winter v. Brockwell*; 8 *East*, 309).

Disturbance of Watercourse. RULE 51.—
The right to the use of the water of a natural stream, belongs, *jure naturæ* and of right, to the owners of the adjoining lands, every one of whom has an equal right to use the water which flows in the stream ; and

consequently, no proprietor can have the right to use the water to the prejudice of any other proprietors (*Chasemore v. Richards*, 7 H. L. Ca. 349; *Wright v. Howard*, 1 S. & S. 203; *Dickenson v. Gr. June. Canal Co.*, 7 Ex. 299).

(1) Every riparian owner may reasonably use the stream, as, for instance, for drinking, watering his cattle or turning his mill, and other purposes, provided he does not thereby seriously diminish the stream. In short, it is a question entirely of degree, and depends upon the fact whether or not an injury is caused to the remaining proprietors by his user (see *Embrey v. Owen*, 6 Ex. 353).

(2) If the rights of a riparian proprietor are interfered with, as by diverting the stream or abstracting or fouling the water, he may maintain an action against the wrongdoer, even though no actual damage has been sustained (*Wood v. Waud*, 3 Ex. 748; *Embrey v. Owen*, 6 Ex. 369; *Crossley v. Lightowler*, L. R., 2 Ch. 478).

Penning back Water. Besides the natural right which every riparian proprietor has to the ordinary user of the water of a stream, and immunity from disturbance of that right by the riparian proprietors higher up the stream, he has also a right to have the water conveyed along the waterecourse out of his lands, and immunity from disturbance of this right by riparian proprietors lower down the stream.

Sub-rule.—*If by means of impediments placed in or across a stream a riparian proprietor causes the stream to flood the lands of a proprietor higher up the stream, he will be liable for damages resulting therefrom; and equally if a higher proprietor collects water and pours it into the watercourse in a body, and so floods the lands of a proprietor lower down the stream, he will be liable for damage resulting therefrom* (*Chasemore v. Richards*, 7 H. L. C. 349; *Sharpe v. Hancock*, 8 Sc. N. R. 46).

Exception. Prescriptive Rights.—Rights in derogation of those of the other riparian proprietors may be gained by grant or prescription (*Acton v. Blundell*, 12 M. & W. 353; *Carlyon v. Larering*, 1 H. & N. 784; 26 L. J., Ex. 251); but where a man has gained a right to use a stream in derogation of the rights of the other riparian proprietors (as, for instance, by fouling it), he must not use such acquired right to the injury of his own grantees, for that would be derogating from his own grant (*Crossley v. Lightowler*, L. R., 2 Ch. 478).

Artificial Watercourses. RULE 52.—An artificial watercourse may have been originally made under such circumstances, and have been so used, as to give all the rights which a riparian proprietor would have had if it had been a natural stream (per Wight-

man J., *Sutcliffe v. Boothe*, 32 L. J., Q. B. 136).

(1) Where a loop had been made in a stream, which loop passed through a field A., it was held that the grantee of A. became a riparian proprietor in respect of the loop (*Nuttall v. Bracewell*, L. R., 2 Ex. 1).

(2) A natural stream was divided immemorially, but by artificial means, into two branches; one branch ran down to the River Irwell, and the other passed into a farm yard, where it supplied a watering trough, and the overflow from the trough was formerly diffused over the surface and discharged itself by percolation. In 1847, W., the owner of the land on which the watering trough stood and thence down to the Irwell, connected the watering trough with reservoirs which he constructed adjacent to, and for the use of, a mill on the Irwell. In 1865, W. became owner of all the rest of the land through which this branch flowed. In 1867, he conveyed the mill with all water rights to the plaintiff. In an action brought by the plaintiff against a riparian owner on the stream above the point of division for obstructing the flow of water, it was held that the plaintiff was entitled to maintain the action (*Holker v. Porrit*, L. R., 8 Ex. 107; L. R., 10 Ex. (Ex. Ch.) 59).

(3) But where the watercourse is merely put in for a temporary purpose, as for drainage of a farm, or the carrying off of water pumped from a mine, a neighbouring landlord, benefited by the flow from the drain or stream, cannot sue the farmer or mine

owner for draining off the water, even after fifty years' enjoyment (*Greatrex v. Hayward*, 8 *Ex.* 291).

Discharging Water on to another's Land.

A right to discharge water on to another's land may be acquired by grant or prescription, but it is a rule that—

RULE 53.—A person having a right to discharge pure water on to the land of another, has no right to discharge water in a polluted state (*Magor v. Chadwick*, 11 *A. & E.* 571).

Private Rights of Way. There is no natural servitude of a private right of way. The only right of way which calls for remark in an elementary work of this kind, is that which is said to arise by necessity; that is to say,—

RULE 54.—Where one grants land to another, and there is no access to such land except through other land of the grantor, the law gives to the grantee a private right of way over the latter (*Gayford v. Moffat*, *L. R.*, 4 *Ch.* 133).

A way of necessity is really a way by grant, for there is no difference where a thing is granted by express words, and where by operation of law it passes as incident to the grant (1 *Wms. Saund.* 323a; *Proctor v. Hodyson*, 24 *L. J.*, *Ex.* 195).

(1) Thus, as is said by Mr. Sergeant Williams (1 *Wms. Saund.* 321, *n.* 6), “Where a man having a close surrounded with his own land, grants the close to another in fee, for life, or for years, the grantee shall have a way to the close over the grantor’s land as incident to the grant, for without it he cannot derive any benefit from the grant.

(2) And so again, where one having two fields, the only access to one of which lies through the other, sells this latter, the law reserves to him a right of way over it (*Pennington v. Gulland*, 22 *L. J., Ex.* 349).

Sub-rule.—*When the necessity ceases the right ceases, but the right revives again when the necessity revives* (*Holmes v. Goring*, 2 *Bing.* 76; *Pearson v. Spencer*, 1 *B. & S.* 584).

Therefore, when by a subsequent purchase a man can approach his land without going over that of his neighbour, his right to do so ceases; but upon the re-sale of such subsequent purchase the right revives.

Alteration in Object. RULE 55.—A right of way is extinguished by a substantial alteration in the original object of the grant of the way.

Thus, where the way is granted to an open space of land, described in the grant as “now used as a wood house,” the grantee, although not bound to

continue to use it as a wood house, cannot use the way if he alters the mode of user of the piece of land.

Disturbance of Common. This happens when any act is done by which the right of another to his common is incommoded or diminished (*Steph. Comm.*, bk. v. c. viii.). There are three different conditions under which this wrong may be suffered, viz.—

(1) Where the wrongdoer having no right of common, puts beasts on the land; or, having such right, puts uncommonable ones on to it.

(2) Where a commoner surcharges or puts more beasts on the common than he is entitled to put; and

(3) Where the wrongdoer encloses or obstructs the common.

Prescription. RULE 56.—The lord may by prescription put a stranger's cattle into the common, and also by a like prescription for common appurtenant cattle that are not commonable may be put into the common (*Steph. Comm.*, bk. v. c. viii.).

If, however, no such prescription exists the cattle of a stranger, or the uncommonable cattle of a commoner, may be driven off, or distrained damage feasant, or their owner may be sued either by the lord or a commoner.

Surcharging. This generally happens where the right of common is appendant, that is to say, where the common is limited to beasts that serve the plough or manure the land, and are levant and couchant on the estate; or where it is appurtenant, that is to say, where there is a right of depasturing a limited number of beasts upon the common, which number is taken to be the number which the land in respect of which the common is appurtenant is capable of supporting through the winter if cultivated for that purpose (*Can v. Lambert*, *L. R.*, 1 *Ex.* 168). A common in gross can only arise from express grant to a particular person and his heirs, and, having no connection with his land, the number of commonable beasts, unless expressly limited by the grant, is indefinite.

RULE 57.—Common appendant and appurtenant being limitable by law, a commoner surcharging the common commits a wrong for which the lord may distrain the beasts surcharged or bring an action, and any commoner may also bring an action, whether the surcharger may be the lord or another commoner (*Steph. Comm.*, bk. v. c. viii.).

Obstruction. The common being free and open to all having commonable rights over it, it follows that—

RULE 58.—When the owner of the land or

some other person so encloses or otherwise obstructs it that the commoner is precluded from enjoying the benefit to which he is by law entitled, the commoner may maintain an action (*Steph. Comm.*, bk. v. c. viii.; and see *City Commissioners of Sewers v. Glass*, *L. R.*, 19 *Eq.* 134).

This may happen either by enclosing the land or ploughing it up, or driving off the cattle, or making a warren and so stocking it that the rabbits eat up all the herbage. The lord may, however, lawfully make a warren if the rabbits be so kept under as not to occasion this wrong (*Ibid.*; and *Bullen v. Langdon*, *C. Eliz.* 876).

Other Disturbances. There are certain other kinds of disturbance, for which I must refer you to the larger works.

Such are disturbance of patronage, pews, franchise, and tenure.

Remedy by Abatement. The law gives a peculiar remedy for nuisances by which a man may right himself. This remedy is called abatement, and consists in the removal of the nuisance.

RULE 59.—A nuisance may be abated by the party aggrieved thereby, so that he com-

mits no riot in the doing of it, nor occasions, in the case of a private nuisance, any damage beyond what the removal of the inconvenience necessarily requires (*Steph. Comm.*, bk. v. c. i.); but a man cannot enter a neighbour's land to prevent an apprehended nuisance (*Id.* 188).

(1) Thus, if my neighbour build a wall and obstruct my ancient lights, I may, after notice and request to him to remove it, enter and pull it down (*R. v. Rosswell*, 2 *Salk.* 459); but this notice should always be given (*Dacres v. Williams*, 16 *Q. B.* 556).

(2) But where the plaintiff had erected scaffolding in order to build, which building when erected would have been a nuisance, and the defendant entered and threw down the scaffolding, such entry was held wholly unjustifiable (*Norris v. Baker*, 1 *Roll. Rep.* 393, *fol.* 15).

(3) Obstructions to watercourses may be abated by the party injured, whether by diminution or flooding (*Roberts v. Rose*, *L. R.*, 1 *Ex.* 82).

(4) A commoner may abate an encroachment on his common, such as a house (*Dacres v. Williams*, *supra*), or fence obstructing his right (*Mason v. Caesar*, 2 *Mod.* 66); but he cannot abate a warren however great a nuisance, but must appeal to a court of justice (*Cooper v. Marshall*, 1 *Burr.* 226).

Remedy of Reversioners. RULE 60.— Whenever any wrongful act is necessarily injurious to the reversion to land, or has actually been injurious to the reversionary interest, the reversioner may sue the wrongdoer (*Beddingfield v. Onslow*, 1 *Saund.* 322).

(1) Thus opening a new door in a house may be an injury to the reversion, even though the house is none the worse for the alteration; for the mere alteration of property may be an injury (*Young v. Spencer*, 10 *B. & C.* 145, 152).

(2) So if a trespass be accompanied with an obvious denial of title, as by a public notice, that would probably be actionable (see judgment, *Dobson v. Blackmore*, 9 *Q. B.* 991).

(3) So the obstruction of an incorporeal right, as of way, air, light, water, &c., may be an injury to the reversion (*Kidgell v. Moore*, 9 *C. B.* 364; *Met. Ass. v. Petch*, 27 *L. J., C. P.* 330; *Greenslade v. Halliday*, 6 *Bing.* 379).

Sub-rule 1.—*The action will not lie for a trespass or nuisance of a mere transient and temporary character* (*Barter v. Taylor*, 4 *B. & Ad.* 72).

Thus a nuisance arising from noise or smoke will not support an action by the reversioner (*Mumford v. O. W. & W. R. Co.*, 26 *L. J., Ex.* 265; *Simpson v. Savage*, 26 *L. J., C. P.* 50).

Sub-rule 2.—*Some injury to the reversion must always be proved, for the law will not assume it from any acts of the defendant* (*Kidgell v. Moore*, *sup.*).

CHAPTER X.

OF FRAUD AND DECEIT.

A VERY important class of wilful wrongs are those arising out of fraud and deceit.

RULE 61.—An action for deceit will lie (1) When the defendant has by a fraudulent misrepresentation, induced another to act, and, so acting, he has been injured or damaged (*Pasley v. Freeman*, 2 Sm. L. C. 71): and (2) where owing to such fraudulent representation made by him to another, some third person has been induced to act, and, so acting, he has been injured or damaged; provided that such false representation was made with the direct intent that such third person should act in the manner that occasioned the injury or loss (*Langridge v. Levy*, 2 M. & W. 519).

(1) So, where one fraudulently misrepresents the amount of his business, and the person to whom such representation is made, acting on the faith

thereof, purchases it and is damnified, an action of deceit will lie against the vendor (*Dobell v. Stevens*, 3 B. & C. 623).

(2) Similarly, where a gunmaker sold a gun to B., for the use of C., fraudulently warranting it to be sound, and the gun burst while C. was using it, and he was thereby injured: Held, that C. might maintain an action for false representation against the gunmaker (*Langridge v. Levy*, *sup.*).

Meaning of the Expression "Fraudulent." It is now clearly settled that in order to make a person liable for a fraudulent misrepresentation he must have been guilty of some moral wrong. In other words, legal fraud, unaccompanied by moral fraud, will fail to support an action of this description (*Collins v. Evans*, 5 Q. B. 820; *Taylor v. Ashton*, 11 M. & W. 401). But though it is necessary that the defendant, in making the false statement, should have committed some moral turpitude, it is by no means essential to show that he knew, as a fact, what he stated was false. "I conceive," remarks Maule, J., in *Evans v. Edmunds*, 13 C. B. 786, "that if a man, having no knowledge whatever on the subject, takes upon himself to represent a certain state of facts to exist, he does so at his peril; and if it be done either with a view to secure some benefit to himself, or to deceive a third person, he is, in law, guilty of a fraud, for he takes upon himself to warrant his own belief of the truth of that which he so asserts." Or again, in *Taylor v. Ashton* (11 M. & W. 401), Parke, B., remarks, "There may, undoubtedly, be a fraudulent representation, if

made dishonestly, of that which the party does not know to be untrue if *he does not know it to be true.*"

Sub-rule 1.—*A defendant has acted fraudulently and is liable—*

(1) *If he has made the misrepresentation not knowing it to be true, or without reasonable and probable grounds on which to suppose it to be true, and it is not necessary to show that he knew it to be untrue: or*

(2) *If, when he made the mis-statement, he made it for the purpose of defrauding the plaintiff, or with a view to secure some benefit to himself.*

The fraudulent purpose is absolutely essential (*Thom v. Bigland*, 8 E.c. 725). If it were otherwise, as remarked in *Bailey v. Walford*, 9 Q. B. 197, 208, "a man might sue his neighbour for any mode of communicating erroneous information; such, for example, as having a conspicuous clock too slow, since the plaintiff might thereby be prevented from attending to some duty, or acquiring some benefit."

A Principal's Liability for the Fraud of his Agent. Sub-rule 2.—*Though, as above stated, it is now settled, that the defendant, in actions of deceit, must have been guilty of moral fraud, it has also been held, after much conflict of opinion, that the fraud of the agent is, in law, the fraud of the principal.*

(1) Thus, a plaintiff having for some time, on a guarantee of the defendants', supplied J. D., a customer of theirs, with oats on credit for carrying out a government contract, refused to continue to do so unless he had a better guarantee. The defendants'

manager thereupon gave him a written guarantee to the effect that the customer's cheque on the bank in plaintiff's favour, in payment for the oats supplied, should be paid on receipt of the government money in priority to any other payment "except to this bank." J. D. was then indebted to the bank to the amount of 12,000*l.*, but this fact was not known to the plaintiff, nor was it communicated to him by the manager. The plaintiff thereupon supplied the oats to the value of 1,227*l.*; the government money, amounting to 2,676*l.*, was received by J. D. and paid into the bank; but J. D.'s cheque for the price of oats drawn on the bank in favour of the plaintiff was dishonoured by the defendants, who claimed to detain the whole sum of 2,676*l.* in payment of J. D.'s debt to them. The plaintiff having brought an action for false representation: Held, first, that there was evidence to go to the jury that the manager knew and intended that the guarantee should be unavailing, and fraudulently concealed from the plaintiff the fact which would make it so; secondly, that the defendants would be liable for such fraud in their agent (*Barwick v. English Joint-Stock Bank, L. R., 2 Ex. 259*).

(2) An officer of a banking corporation, whose duty it was to obtain the acceptance of bills of exchange in which the bank was interested, fraudulently, but without the knowledge of the president or directors of the bank, made a representation to A., which, by omitting a material fact, misled A., and induced him to accept a bill in which the bank was interested, and A. was compelled to pay the bill:

Held; that A. could recover from the bank the amount so paid. In an action of deceit, whether against a person or against a company, the fraud of the agent may be treated, for the purposes of pleading, as that of the principal (*Mackay v. Commercial Bank of New Brunswick, L. R., 5 P. C. 394*).

Fraudulent Character must be in Writing.

Sub-rule 3.—*No action lies against a person for making a false representation of the conduct, credit, ability or dealings of another, with intent to procure credit, money, or goods for such person, unless such false representation is in writing, signed by the defendant (9 Geo. 4, c. 14, s. 6).*

Under this act, a false representation as to the credit of another person, in order to maintain an action, must be signed by the person making it, and not by an agent (*Swift v. Jewsbury (P. O.) and Goddard, L. R., 8 Q. B. 244; 9 Q. B. (Ex. Ch.) 301*). For the same reason, one partner cannot bind his co-partners, even though he has express authority to sign (*Mason v. Williams, 28 L. T., N. S. 232*).

Fraudulent Concealment and Non-disclosure. RULE 62.—The mere fact of offering a defective chattel for sale, where nothing is said about quality and condition, and nothing is done to conceal the defect, gives no cause of action, though the seller knows of the defect, and he knows that if the purchaser even suspected him of the knowledge,

he would not buy (see Brett, L. J., in *Ward v. Hobbs*, L. R., 3 Q. B. D. 162).

(1) Thus the defendant sent for sale to a public market pigs which he knew to be infected with a contagious disease. They were exposed for sale subject to a condition that no warranty would be given and no compensation would be made in respect of any fault. No verbal representation was made by or on behalf of the defendant as to the condition of the pigs. The plaintiff having bought the pigs, put them with other pigs which became infected. Some of the pigs bought from the defendant, and also some of those with which they were put, died of the contagious disease: Held, that the defendant was not liable for the loss sustained by the plaintiff, for that his conduct in exposing the pigs for sale in the market did not amount to a representation that they were free from disease (*Ward v. Hobbs*, *sup.*).

(2) So where a vessel was sold "with all faults," but the seller knew of a latent defect, but made no representation in fact, nor did anything to conceal or to endeavour to conceal the defect: Held, that his knowledge of the latent defect gave no right to the purchaser to complain of the purchase (3 *Camp.* 154).

See also *Peck v. Gurney* (L. R., 6 H. L. 403), in which case Lord Cairns remarks: "I entirely agree with what has been stated by my noble and learned friends before me, that mere silence could not, in my opinion, be a sufficient foundation for this proceeding. Mere non-disclosure of material facts, however morally censurable, however that non-

disclosure might be a ground in a proper proceeding at a proper time for setting aside an allotment or a purchase of shares, would, in my opinion, form no ground for an action in the nature of an action for misrepresentation. There must, in my opinion, be some active misrepresentation of fact, or, at all events, such a partial and fragmentary statement of fact, as that the withholding of that which is not stated makes that which is stated absolutely false."

(3) "Even if the vendor was aware," observes Lord Blackburn, "that the purchaser thought the article possessed that quality, and would not have entered into the contract unless he had so thought, still the purchaser is bound, unless the vendor was guilty of some fraud or deceit upon him, and a mere abstinence from disabusing the purchaser of that impression is not fraud or deceit; for, whatever may be the case in a court of morals, there is no legal obligation on the vendor to inform the purchaser that he is under a mistake, not induced by the act of the vendor" (*Smith v. Hughes*, *L. R.*, 6 *C. P.* 597).

Exception. But when the vendor does something actively to deceive the vendee, as where he endeavours to conceal the defect by some artificial means, or where he makes a false representation, then an action will lie.

(1) The vendor of a house, knowing of a defect in one of the walls plastered it up and papered it over, in consequence whereof the vendee was deceived as to its true condition, and was damaged: Held, the purchaser could maintain an action of deceit (*Pickering v. Dawson*, 4 *Taunt.* 785).

(2) Again, where a ship was to be taken "with all faults," and the vendor knew of a latent defect in her, and in order to escape its detection, concealed it and made a fraudulent representation of her condition: Held, that an action of deceit would lie (*Schneider v. Heath*, 3 Camp. 506).

Expression "With all Faults." Sub-rule. — *This expression will not protect the vendor where he has been guilty of fraud either by making a fraudulent representation, or by doing something to prevent the vendee from discovering a defect.*

"A stipulation that the thing sold is to be taken with all faults, and without allowance for any defect, error, or misdescription, will protect the vendor from all unintentional mistakes, misstatements, and misdescription, but not from the consequence of any wilful deception" (*Add. on Torts*, p. 852).

CHAPTER XI.

OF TRESPASS TO AND CONVERSION OF CHATTELS.

General Rule. RULE 63.—Every direct forcible injury, or act disturbing the possession of goods without the owner's consent, however slight or temporary the act may be, is a trespass, whether the injury be committed by the defendant himself or by some animal belonging to him; and if the trespass amount to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner (as by taking, using or destroying them), it then becomes a wrongful conversion (*Fouldes v. Willoughby*, 8 M. & W. 540; *Burroughs v. Bayne*, 29 L. J., Ex. 185).

(1) Thus beating or otherwise ill-using the plaintiff's dogs or other animals is a trespass (*Dand v. Sexton*, 3 T. R. 37). And so where the defendant's horse injured the plaintiff's mare, by biting and kicking her through the fence separating the plaintiff's land from the defendant's, it was held that there was a trespass by the act of the defendant's horse, for which the defendant was liable, apart from any question of negligence on the part of the de-

fendant (*Ellis v. Loftus Iron Co., L. R., 10 C. P. 10*).

(2) The innocence of the trespasser's intentions is immaterial. Thus where the sister-in-law of A., immediately after his death removed some of his jewelry from a drawer in the room in which he had died to a cupboard in another, in order to insure its safety, and the jewelry was subsequently stolen, it was held that the sister-in-law had been guilty of a trespass in the absence of proof that it was reasonably necessary (*Kirk v. Gregory, L. R., 1 Ex. D. 55*).

(3) An illegal distress, or any other mode of seizing and taking goods without due authority, is a trespass; as, for instance, the taking away a tombstone erected by the plaintiff (*Spooner v. Brewster, 3 Bing. 136*).

(4) So if one lawfully having the goods of another for a particular purpose destroy them, he is guilty of trespass and conversion (*Cooper v. Willomat, 1 C. B. 692*).

(5) So if a sheriff sells more goods than are sufficient to satisfy an execution, he will be liable for a conversion of those in excess (*Aldred v. Constable, 6 Q. B. 381*).

(6) So if A. starts a hare in the ground of B., and hunts it and kills it there, it is a trespass; for so long as the hare is upon B.'s land it is B.'s property (*Sutton v. Moody, 1 Ld. Raym. 250*). So rabbits bred in a warren are the property of the breeder so long as they stay in his land, but not after they have left it (*Hudlesden v. Gryssel, Cro. Jac. 195*).

(7) And so when the plaintiff granted a lease to the defendant, excepting the trees and herons build-

ing therein, and the defendant shot the herons, the plaintiff was held entitled to recover; for, although herons are *fera natura*, and incapable whilst free of being absolutely owned, yet, so long as they remained in the trees of the plaintiff they were his property (*Bishop of London's case*, 14 Hen. 8).

(8) The purchase of goods, which the vendor had no right to sell, accompanied by taking possession, is a conversion by the purchaser as against the real owner, even though the purchaser was unaware that the vendor had no authority; for want of intention is no excuse (*Hilbery v. Hutton*, 33 L. J., Ex. 190).

Exceptions. (1) *Plaintiff's Fault*.—It is a good justification that the trespass was the result of the plaintiff's own negligent or wrongful act.

Thus, if he place his horse and cart so as to obstruct my right of way, I may remove it, and use, if necessary, force for that purpose (*Slater v. Swann*, 2 St. 892). So, if his cattle or goods trespassing on my land get injured, he has no remedy (*Turner v. Hunt, Brownl.* 220); unless I use an unreasonable amount of force, as, for instance, by chasing trespassing sheep with a mastiff dog (*King v. Rose*, 1 Freem. 347).

So, if a man wrongfully takes my garment and embroiders it with gold, I may retake it; and if J. T. have a heap of corn, and J. D. will intermingle his corn with the corn of J. T., the latter shall have all the corn, because this was done by J. D. of his own wrong (Coke, C. J., in *Ward v. Eyre*, 2 Bulstr. 323). And likewise if one takes away my carriage, and has it painted anew without

my authority, I am entitled to have the carriage without paying for the painting (*Hiscox v. Greenwood*, 4 *Esp.* 174).

(2) *Defence of Property*.—A trespass committed in defence of property is justifiable.

Thus a dog chasing sheep or deer in a park, or rabbits in a warren, may be shot by the owner of the property in order to save them, but not otherwise (*Wells v. Head*, 4 *C. & P.* 568).

But a man cannot justify shooting a dog on the ground that it was chasing animals *feræ nature* (*Vere v. Lord Cawdor*, 11 *East*, 569), unless it was chasing game in a preserve, in which case it seems that it may be shot in order to preserve the game, but not after the game are out of danger (*Reade v. Edwards*, 34 *L. J., C. P.* 31, and *Ad.* 359).

(3) *Self-defence*.—A trespass committed in self-defence is justifiable.

Thus to kill another's dog whilst in the act of attacking the defendant is justifiable, but not otherwise.

(4) *In exercise of Right*.—A trespass committed in exercise of a man's own rights is justifiable (*Ad.* 308).

Thus, seizing goods of another under a lawful distress for rent or damage feasant is lawful.

(5) *Legal Authority*.—Due process of law is a good justification.

Thus to take goods under a *ca. sa.*, or to destroy or seize goods under the order of a court, is justifiable.

Possession. RULE 64.—To maintain an action for trespass or conversion, the plaintiff must be the person in actual or constructive possession of the goods (*Smith v. Miller*, T. R. 480).

Thus a reversioner cannot sue a third party for *trespass or conversion* (*Bradley v. Copley*, 1 C. B. 685): conversely, the person in possession of a chattel, although not the owner, may maintain trespass in respect of it, *ex. gra.*, the master of a ship (*Moore v. Robinson*, 2 B. & Ad. 817).

Possession follows Title. Sub-rule 1.—*A legal right to the possession of personally draws to it the possession* (*Balme v. Hutton*, 9 Bing. 477).

(1) Thus where the person in temporary possession (as a carrier) delivers my goods to the wrong person, then, as the immediate right to the possession of them becomes again vested in me, so the law immediately invests me with the possession, and I can maintain an action for them against either the bailee or the purchaser (*Cooper v. Willomat*, 1 C. B. 672; *Wild v. Pickford*, 8 M. & W. 443).

(2) So where a bailee became bankrupt, and his assignees sold the goods, the bailor was held entitled to sue them for a conversion (*Fenn v. Bittleston*, 7 Ex. 152).

(3) *Sale of Property under Lien.* And so when by a sale of goods the property in them has passed to the purchaser, subject to a mere lien for the price, if the vendor resells and delivers them to another he

will be liable for conversion, but in such a case the plaintiff will only be entitled to recover the value of the goods, less the sum for which the defendant had a lien upon them (*Page v. Edulgee*, *L. R.*, 1 *C. P.* 127; *Martindale v. Smith*, 1 *Q. B.* 389).

(4) And on the same principle an administrator may maintain an action for trespass to goods, which trespass was committed previously to his grant of letters of administration (*Thorpe v. Smallwood*, 5 *M. & G.* 760).

(5) So a trustee having the legal property may sue in respect of goods, although the actual possession may be in his cestui que trust (*Wooderman v. Baldock*, 8 *Taunt.* 676).

What Possession suffices. Sub-rule 2. — *Any possession is sufficient to sustain an action for trespass or conversion against a wrongdoer.*

(1) Thus in the leading case of *Armory v. Delamirie* (1 *Sm. L. C.* 315), it was held that the plaintiff, the finder of a jewel, could maintain an action of trover against a jeweller to whom he had shown it, with the intention of selling it, and who had refused to return it to him; for his possession gave him a good title against all the world except the true owner.

(2) So also in *Elliott v. Kempe* (7 *M. & W.* 312), it was laid down that the fact of possession is *prima facie* evidence of the right to possession, and therefore sufficient to maintain trespass against a wrongdoer who cannot show a better title, or authority under a better title.

Therefore a defendant cannot set up a *jus tertii*

against a person in actual possession. But where the possession of the plaintiff is not actual, but only constructive, the defendant may set up a *jus tertii*; for constructive possession depends upon a good title, and if the title be bad there can be no constructive possession (see *Leake v. Loveday*, 4 M. & G. 972).

Reversioner's Remedy. Sub-rule 3. — *The person entitled to the reversion of goods may maintain an action of trespass on the case for any permanent injury done to them (Tancred v. Allgood, 28 L. J., Ex. 362; Lancas. Waggon Co. v. Fitzhugh, 30 L. J., Ex. 231).*

Thus where the plaintiff, the owner of a barge, let it to A., and whilst in A.'s possession and during the continuance of the lease it was permanently injured by a third party (the defendant): it was held that an action lay by the plaintiff, although he could not have sued for conversion (*Mears v. L. & S. W. R. Co.*, 11 C. B., N. S. 854).

In the same case, Williams, J., says: "It is fully established that in the case of a bailment not for reward, either the bailor or bailee may bring an action for an injury to the thing bailed; but in the case of a hiring the owner cannot bring trover, because he has temporarily parted with the possession. It seems to me, however, clear that though the owner cannot bring an action where there has been no permanent injury to the chattel, it has never been doubted that where there is a permanent injury

the owner may maintain an action against the person whose wrongful act has caused that permanent injury."

Joint Owners. RULE 65.—A joint owner can only maintain trespass or conversion against his co-owner when the latter has done some act inconsistent with the joint-ownership of the plaintiff (2 *Wms. Saund.* 470; and see *Jacobs v. Senard, L. R., 5 H. L.* 464).

(1) Thus a complete destruction of the goods would be sufficient to sustain an action, for the plaintiff's interest must necessarily be injured thereby.

(2) But a mere sale of them by one joint owner would not be a conversion, for he could only sell his share in them. Unless, indeed, he sold them in market overt, so as to vest the whole property in the purchaser, in which case it would be a conversion (*Mayhew v. Herrick, 7 C. B.* 229).

Trespass ab initio. RULE 66.—If one, lawfully taking a chattel, but not absolutely, abuses or wastes it, he renders himself a trespasser ab initio (*Oxley v. Watts, 1 T. R.* 12).

Thus if one find a chattel it is no trespass to keep it as against all the world except the right owner,

but if one spoil or damage it, and the right owner eventually claim it, then the subsequent damage will revert back, and render the original taking unlawful (*Ibid.*). But, as against the true owner, a man commits no conversion by keeping the goods until he has made due inquiries as to the right of the owner to them (*Vaughan v. Watt*, 6 M. & W. 492; and see *Pillott v. Wilkinson*, 34 L. J., Ex. 22).

Remedies. There were formerly four forms of remedy for the preceding trespasses by action, and one peculiar one by act of the person injured called—

Recaption. RULE 67.—When any one has deprived another of his goods or chattels, the owner of the goods may lawfully reclaim and take them wherever he happens to find them, so it be not in a riotous manner or attended with breach of the peace (*Bl. Comm.*).

Thus if, for instance, my horse is taken away, and I find it in an inn or on a common, or at a fair, I may retake it, but (unless it was feloniously stolen) I cannot break open a private stable for the purpose (*Ibid.*; and *Higgins v. Andrews*, 2 Roll. R. 55).

Remedies by Action. By the effect of the Judicature Acts the distinction in form between actions has been finally abolished, so that the former

actions of trespass, which lay for an interference with goods, trover, which lay for a wrongful conversion of goods, and detinue, which lay for a wrongful detainer of goods, no longer exist, although that of replevin is, at all events in its inception, still different from all other actions. It will, therefore, be convenient to consider the ordinary form of action first, and the action of replevin by itself afterwards.

Ordinary Remedy by Action. RULE 68.
—Wherever there has been a trespass or wrongful conversion or a wrongful detention of a chattel, an action lies at the suit of the person injured; and where the defendant still retains the chattel the court or a judge has power to order that execution shall issue for return of the specific chattel detained, without giving the defendant the option of paying the assessed value instead; and if the chattel cannot be found, then, unless the court or judge shall otherwise order, the sheriff shall distrain the defendant by all his goods and chattels in his bailiwick till the defendant renders such chattel (Com. Law Proc. Act, 1854, s. 78).

Replevin. This remedy is, practically speaking, applicable only in cases of goods unlawfully distrained.

RULE 69.—The owner of goods distrained is entitled to have them returned upon giving such security as the law requires to prosecute his suit, without delay, against the distrainer, and to return the good if a return should be awarded (see 19 & 20 Viet. c. 108, ss. 63—66).

The application for the replevying or return of the goods is made to the registrar of the county court of the district where the distress was made, who thereupon causes their return on the plaintiff's giving sufficient security. The action must be commenced within one month in the county court, or within one week in one of the superior courts; but if the plaintiff intends to take the latter course it is also made a condition of the replevin bond that the rent or damage in respect of which the distress was made exceeds 20*l.*, or else that he has good grounds for believing that the title to some corporeal or incorporeal hereditaments, or to some toll, market, fair, or franchise, is in dispute (19 & 20 Viet. c. 108, s. 95).

Waiver of Tort. **RULE 70.**—When a conversion consists of a wrongful sale of goods the owner of them may waive the tort, and sue by a count for money had and received for the price which the defendant obtained

for them (*Lamine v. Dorrell*, 2 *L. Raym.* 1216; *Oughton v. Seppings*, 1 *B. & Ad.* 241).

(1) Thus where the sheriff took in execution the goods of a bankrupt which had vested in the assignees by reason of a previous act of bankruptcy, and sold them after notice of the act of bankruptcy, the assignees were held entitled to recover the price obtained for the goods by the sheriff as money paid to their use (*Notley v. Buck*, 8 *B. & C.* 160).

(2) And so where some stock of the plaintiff's was sold by a member of the defendant's firm under a forged power of attorney, and the firm received the money for which it had been sold, it was held that the plaintiff could recover the money as paid to his use (*Marsh v. Keating*, 1 *Bing.*, *N. C.* 198).

Sub-rule.—*But by waiving the tort the plaintiff estops himself from recovering any damages for the wrong.*

Thus he cannot claim the money received under a wrongful sale, and also claim damages in respect of the tort itself (*Brewer v. Sparrow*, 7 *B. & C.* 310).

Stolen Goods. **RULE 71.**—If any person who may have stolen property is prosecuted to conviction by or on behalf of the owner, the property shall be restored to the owner, and the court before whom such person shall

be tried shall have power to order restitution thereof (24 & 25 Vict. c. 96, s. 100).

Therefore, even if the goods were sold by the thief in market overt (which at common law gives an indefeasible title to the purchaser), yet by this section they must be given up to the original owner; and where no order is made under the act, yet the act revests the goods and gives the owner a right of action for them (*Scattergood v. Silvester*, 19 *L. J.*, *Q. B.* 447).

Limitation. All actions for trespass to or conversion or detainer of goods and chattels, must be commenced within six years next after the cause of action arose.

CHAPTER XII.

OF INFRINGEMENTS OF TRADE MARKS AND PATENT
AND COPYRIGHT.

Class of Rights. Besides injuries to person, reputation, liberty, or property, there are also injuries which cannot, perhaps, strictly speaking, be ranged under any of these heads.

There are very many rights belonging to individuals of which it is impossible to treat in any single work, much less in a work of this kind; and therefore of these it is sufficient to say, that where they are infringed the law will always supply a remedy, in accordance with the maxim *ubi jus ibi remedium est*.

But there are three instances of rights so important that they demand some special elementary notice to be taken of them, even in a small work. Such are the rights incident to a trade mark, patent right, and copyright.



SECTION 1.

Imitation of Trade Marks.

Definition. RULE 72.—A trade mark is the symbol by which a man causes his goods

or wares to be identified and known in the market, and must now consist of one or more of the following essential particulars, namely:—

A name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or

A written signature or copy of a written signature of an individual or firm, or a distinctive device, mark, heading, label or ticket; or

A combination of any one or more of the above with any letters, words or figures, or combination of letters, words or figures; or

Any special and distinctive word or words, or combination of figures or letters used as a trade mark previously to the 13th August, 1875 (38 & 39 Vict. c. 91, s. 10).

Nature of the Title to Relief. Whether the relief in the case of infringements of trade mark is founded upon a right of property in the mark, or on fraudulent misrepresentation, is by no means so clear as could be desired. It would seem that the tendency of the older cases was to hold that the jurisdiction was founded on fraud; but in the case of the *American Cloth Co. v. American Leather Cloth Co.* (33 L. J., Ch. 199), Lord Westbury said, “The true principle seems to be that the jurisdiction of the court in the protection given to trade marks is founded upon

property," not of course property in the symbol itself, but in the sole application of the symbol to the particular class of goods of which it constituted the trade mark; and this view was followed in *Millington v. Fox* (3 M. & C. 338), and in *Harrison v. Taylor* (11 Jur., N. S. 408). On the other hand, in *The Singer Machine Manufacturers v. Wilson* (L. R., 2 Ch. D. 434), the Master of the Rolls scouted the idea of there being any property in a trade mark, and founded the jurisdiction wholly upon deception. This view was supported by the court of appeal (L. R., 2 Ch. D. 451), but upon the case being brought before the House of Lords at the end of 1877, Lord Cairns said, "That there have been many cases in which a trade mark has been used, not merely improperly but fraudulently, and that this fraudulent use has often been adverted to and made the ground of the decision, I do not doubt; but I wish to state in the most distinct manner that, in my opinion, fraud is not necessary to be averred or proved in order to obtain protection for a trade mark. . . . The action of the court must depend upon the right of the plaintiff and the injury done to that right. What the motive of the defendant may be, the court has very imperfect means of knowing. If he was ignorant of the plaintiff's rights in the first instance, he is, as soon as he becomes acquainted with them, and perseveres in infringing upon them, as culpable as if he had originally known them." Lord Blackburn, however, was more guarded in his language, and said, "I prefer to say no more, than that I am not as yet prepared to assent, either

to the position that there is a right of property in a name, or, what seems to me nearly the same thing, to assent, to its full extent, to the proposition, that it is not necessary to prove fraud." It is, therefore, somewhat difficult to see upon what ground the court gives relief, but it is humbly suggested, that, as distinguished from an actual property in a trade mark, there is a negative property or right of preventing any other person from using it in such a manner as to cause a probability of such latter person's goods being mistaken for those of the person who has used the trade mark, but that such wrongful user, without fraud, is no ground for obtaining damages. Whether, however, this is the true reason or not, it seems to be well established that,—

RULE 73.—Where a person has a definite mark, he is entitled to an injunction to restrain any other person from using any mark of such a degree of similarity, as either actually to have deceived, or such as obviously might deceive, the public, although there might be no intention to deceive (see per Lord Cairns in *Singer Machine Manufacturers v. Wilson*, *sup.*, and per Vice-Chancellor Wood in *Welch v. Knott*, 4 K. & J. 747). But he will not be liable to an action for damages, or (query) to render an account of his profits, unless he has acted fraudulently

(see per Lord Blackburn in *Singer Manufacturers v. Wilson*, *sup.*).

1. Thus, in *Harrison v. Taylor* (*sup.*), the plaintiff had adopted as his trade mark the figure of an ox, on the flank of which was printed the word "Durham," the names of the plaintiff being printed above the word "Durham," and the word "mustard" below. The defendants, who were also mustard manufacturers, used a similar ox, but without the words "Durham" and "mustard," but having his name Taylor printed below. The court, however, held, that the mark was so similar as to be likely to deceive intending purchasers; and, although the defendant did not know that he had infringed the plaintiff's mark, granted an injunction to restrain him from further using it.

(2) So, in *Cocks v. Chandler* (*L. R.*, 11 *Eq.* 446), where the inventor of a sauce sold it in wrappers, whereon it was called "The Original Reading Sauce," and the defendant brought out a sauce which he labelled "Chandler's Original Reading Sauce," he was restrained from doing so for the future.

(3) So where A. introduces into the market an article which, though previously known to exist, is new as an article of commerce; and has acquired a reputation in the market by a name, not merely descriptive of the article; B. will not be permitted to sell a similar article under the same name (*Braham v. Bustard*, 1 *H. & M.* 449).

(4) And so also in *McAndrew v. Bassett* (33 *L. J.*, *Ch.* 561), the plaintiffs had manufactured liquorice

which they stamped with the word "Anatolia;" and it was held, that, though this was but the name of a place, yet a property in it could be acquired when it had been notoriously applied to a vendible commodity.

(5) And so where the omnibuses of an omnibus proprietor were marked with particular figures and devices, an injunction was granted to restrain an opposition omnibus proprietor from adopting similar figures and devices (*Knott v. Morgan*, 2 *Keen*, 219).

Assignment of. Sub-rule.—*Although a trader may have a property in a trade mark, sufficient to give him a right to exclude all others from using it; if his goods derive their increased value from the personal skill or ability of the adopter of the trade mark, he will not be allowed to assign it; for that would be a fraud upon the public* (*Leather Cloth Co. v. American Leather Cloth Co.*, 1 *H. & M.* 271). *But if the increased value of the goods is not dependent upon such personal merits, the trade mark is assignable* (*Bury v. Bedford*, 33 *L. J.*, *Ch.* 465).

Exception. Selling Articles under Vendor's own Name.—Where a person sells an article with his own name attached, and another person of the same name sells a like article with his name attached, an injunction will not be granted to prevent such last-named person from doing so, unless it be proved that he does it with the fraudulent intention of palming his goods upon the public, as being those of the plaintiff (*Burgess v. Burgess*, 22 *L. J.*, *Ch.* 675; *Sykes v. Sykes*, 3 *B. & C.* 541).

Registration. RULE 74.—No person can institute any suit to prevent the infringement of any trade mark, until and unless such mark is registered in the register of trade marks (with regard to textile fabrics, this rule does not come into operation until January 1st, 1879). Registration is *primâ facie* evidence of the right to the trade mark, and after five years is conclusive evidence (38 & 39 Vict. c. 91, ss. 1, 3).



SECTION 2.

Infringement of Patent Right.

Patent Right. A patent right is a privilege granted by the Crown (by letters patent) to the first inventor of any new manufacture or invention, that he and his licensees shall have the sole right, during the term of fourteen years, to make and vend such manufacture or invention.

The right is created and defined by various statutes, the first of which was 21 Jac. 1, c. 3, usually called the Statute of Monopolies. The rule laid down by that Act was as follows:—

RULE 75.—All letters patent for the term of fourteen years or under, by which the privilege of sole working or making any new manufactures within this realm, which others at the time of granting the letters patent shall

not use, shall be granted to the true and first inventor thereof; so as they be not contrary to law nor mischievous to the state, nor to the hurt of trade nor generally inconvenient.

It will be seen that the rule limits the grant of letters patent to the concurrence of four conditions: viz. (1) that the article must be a manufacture, (2) that it must be new, (3) that the patentee must be the true and first inventor, and (4) that it be of general public utility.

What is a Manufacture. A manufacture, according to the derivation of the word, means some article made by hand; but this is hardly the sense in which it is used in the rule.

Sub-rule 1.—“*The word manufacture has been generally understood to denote either a thing made which is useful for its own sake, and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or some other useful purpose; or it may perhaps extend also to a new process to be carried on by known implements, or elements, acting upon known substances, and ultimately producing some other known substance, but in a cheaper or more expeditious manner, or of a better and more useful kind*” (Abbott, C. J., *R. v. Wheeler*, 2 B. & M. 349).

The latter part of this sub-rule has since been

taken out of the regions of conjecture, and expressly confirmed (*Crane v. Price*, 4 *M. & G.* 580).

Thus a patent for the omission merely of one or more of several parts of a process, whereby the process may be more cheaply and expeditiously performed, is valid (*Russell v. Cowley*, 1 *Webst. R.* 464).

II. Newness of Manufacture. As we have seen, the invention must be new, or otherwise the letters patent will afford it no protection. On this point the following principle, generally known as the rule in *Hill v. Evans*, is applicable.

Sub-rule 2.—*The prior knowledge of an invention to avoid a patent must be such knowledge as will enable the British public to perceive the very discovery and to carry the invention into practical use* (*Hill v. Evans*, 4 *D., F. & J.* 288.)

(1) Thus, a new combination of purely old elements is a novel invention, because the public could not have perceived the combination from the separate parts (*Hindm.* 124).

(2) On the other hand, the mere application of a known instrument to purposes so analogous to those to which it has been previously applied as to at once suggest the application, is no ground for a patent (*Harwood v. G. N. R. Co.*, 2 *B. & S.* 194, and 11 *H. L. C.* 654). So where there was a known invention for dressing cotton and linen yarns by machinery, and a subsequent patent was procured for finishing yarns of wool and hair, the process being the same as in the first invention for cotton and linen, the

patent was held void (*Brook v. Aston*, 32 *L. J.* 341, and *Patent Bottle Co. v. Segner*, 5 *C. B.*, *N. S.* 164; but compare *Dangerfield v. Jones*, 13 *L. T.*, *N. S.* 142, and *Young v. Fernie*, 4 *Giff.* 577).

(3) Again, where crinolines were made of whalebone suspended by tapes, and an inventor claimed a patent for crinolines of exactly similar construction, with the single substitution of steel watch-springs for whalebone, it was held that there was not sufficient novelty.

(4) If the article be new in this realm, but not new elsewhere, it is yet the subject for a valid patent; for the object of letters patent is to give a species of premium for improving the manufactures, not so much of the world, as of the United Kingdom (*Beard v. Egerton*, 3 *C. B.* 97).

Inference of Novelty. Sub-rule 3.—*If there is great utility proved, novelty will be inferred, unless the facts render such inference impossible* (*Craze v. Price*, 1 *Webst. Pat. Ca.* 393; *Young v. Fernie*, 4 *Giff.* 577).

III. Meaning of true and first Inventor. Sub-rule 4.—*If the invention has been communicated to the patentee by a person in this country, he cannot claim to be the true and first inventor; but if he has acquired the knowledge of the invention abroad, and introduces it here, the law looks upon him as the true and first inventor* (*Lewis v. Marling*, 10 *B. & C.* 22; *Edgubury v. Stephens*, 2 *Salk.* 447).

The reason of this sub-rule is, that it is immaterial,

as far as regards the good of the kingdom, whether a man has acquired knowledge of the manufacture by study, observation, or travel (2 *Steph. Comm.* 27).

If the invention has been discovered before, but kept secret by the inventor, it does not render the patent of a subsequent inventor of it invalid; for it is new so far as the public are concerned (*Carpenter v. Smith*, 1 *Webst. R.* 534, per Lord Abinger).

IV. General Public Utility. Sub-rule 5.—*The community at large must receive some benefit from the invention* (Ad. 53).

The reason of this condition is obvious, for an useless invention not only does not merit the premium of a monopoly, but what is worse, prevents other inventors from improving upon it.

Thus if one produces old articles in a new manner, such new way must, in some way, be superior to the old method, in order to support a patent; for otherwise the old method is as good as the new. But if the article is produced at a cheaper rate by the new machine, or in a superior style, it is a good ground for a patent.

Specification. As the object of letters patent is to give the benefit of an invention to the public at large, instead of allowing it to remain a secret in the hands of the inventor; it follows that the nature of the invention must be declared by the inventor.

RULE 76.—The letters patent are always

granted upon the condition, that they shall be void unless a sufficient description of the nature of the invention and the mode of carrying it into effect (so as to enable ordinarily skillful persons to practise and use it at the end of the term of fourteen years) shall be filed in the Court of Chancery, within a specified time (15 & 16 Vict. c. 83, s. 27).

Thus if the specification (as the description is called) be ambiguous, insufficient or misleading, it will render the patent void (*Simpson v. Holliday*, L. R., 1 H. L. 315; *Savory v. Price*, Ry. & Mo. 1); unless the ambiguity, variation, or imperfection be slight and immaterial, when it will not avoid the patent (*Gibbs v. Cole*, 3 P. Wms. 255).

.

Remedy for Infringement. RULE 77.—The court may award damages, and also grant an injunction, and order an account for the infringement of a patent (15 & 16 Vict. c. 83, ss. 41 and 42; *Penn v. Jack*, L. R., 5 Eq. 81).

Of course the defendant in any such action or suit may plead the invalidity of the patent, on the grounds of want of novelty or utility, that the patentee is not the first and true inventor, that the article is

not the subject for a patent, &c.: or he may plead that his manufacture is different from that of the plaintiff; but in such a case he must show that the general idea and fashion of his invention is different to that of the plaintiff; for it may be, that the machinery for making the manufacture is not of the essence of, but only incidental to, the manufacture (*Boulton v. Watt*, 2 *H. Bl.*, per Eyre, C. J.; *Jupe v. Pratt*, 1 *Webst. R.* 146).

Such is a slight sketch of the law relating to patents, which is, however, of so vast a character, that it almost forms of itself a separate branch of jurisprudence. Let us now pass on to the law of copyright.

SECTION 3.

Of Infringement of Copyright.

Definition. Copyright is the exclusive right which an author possesses of multiplying copies of his own work.

It seems to be doubtful whether copyright existed at common law, but, however that may be, it is *now* positively defined and settled by statute.

The first act on the subject was 8 Ann. c. 19, (afterwards amended by 15 Geo. 3, c. 53, and 41 Geo. 3, c. 107), by which the exclusive right of printing and reprinting was given to the author and his assigns for the term of fourteen years and no longer; provided that if the author should be living at the expiration of that period, the period should be extended to him for another term of fourteen years.

Common Law Right. It was long doubted whether, supposing the author to have a common law copyright, these statutes abridged it; but at length this was set at rest by the celebrated case of *Donaldson v. Beckett* (4 Burr. 2408), by which it was decided, that if any such right did exist at common law, it was nevertheless taken away by the statutes. And at the same time the majority of the judges expressed an opinion, that at common law the right of publishing and republishing his works belonged to the author and his assigns for ever.

The next act was 54 Geo. 3, c. 156, which extended the period to twenty-eight years; and if the author should be still living at the expiration of that period, to the residue of his natural life.

Law at present Time. All these acts, however, are now repealed by 5 & 6 Viet. c. 45.

RULE 78.—(1) The copyright in a book published in the author's lifetime shall belong to the author and his assigns during the life of the author, and seven years after his death; provided that, if such period of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years (5 & 6 Viet. c. 45, s. 3).

(2) And also the copyright in a work published subsequently to the author's death,

shall belong to the proprietor of the manuscript for the term of forty-two years from the first publication (*Ibid.*).

(3) The proprietor of copyright commencing after the passing of that act (10th June, 1833) shall not sue or proceed for any infringement of his copyright before making an entry of it at Stationers' Hall (sect. 11).

Exception. Immoral Works.—There is no copyright in libellous, fraudulent or immoral works (*Stockdale v. Omnighy*, 5 B. & C. 173; *Southey v. Sherwood*, 2 Mer. 435).

So where a work professes to be the work of a person other than the real author, with the object thereby to induce the public to pay a higher price for it, no copyright can be claimed in it (*Wright v. Tallis*, 1 C. B. 893).

Meaning of Book. Sub-rule.—*The word book includes every volume, part and division of a volume, pamphlet, sheet of letter-press, sheet of music, chart, map or plan separately published* (sect. 2).

(1) Thus there may be copyright in the wood engravings of a work, for they are part of the volume (*Bogue v. Houlston*, 5 De G. & Sm. 267).

(2) So also copyright may subsist in part of a work, although the rest may not be entitled to it (*Low v. Wood*, L. R., 6 Eq. 415).

(3) But it seems that copyright is not claimable in

a single word, as the title of a magazine; "Belgravia" for instance (*Macmillan v. Hogg*, L. R., 2 Ch. 207).

What is Piracy of Copyright. RULE 79.
—The act that secures copyright to authors, guards against the piracy of the words and sentiments, but it does not prohibit writing on the same subject (per Mansfield, C. J., *Sayre v. Moore*, 1 East, 359).

(1) Thus, in the above case, Lord Mansfield further directed the jury, that the question for them was, "whether the alteration be colorable or not; there must be such a similitude as to make it probable and reasonable to suppose that one is a transcript, and nothing more than a transcript. In the case of prints, no doubt different men may take engravings from the same picture. The same principle holds with regard to charts. Whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly here, any more than in other instances; but upon any question of this kind, the jury will decide whether it be a servile imitation or not. If an erroneous chart be made, God forbid it should not be corrected, even in a small degree, so that it thereby becomes more serviceable and useful."

(2) And even where a great part of the plaintiff's work has been taken into the defendant's, it is no infringement, so that the defendant has so carefully

revised and corrected it, as to produce an original result (*Spiers v. Broome*, 6 *W. R.* 352); or, if it was fairly done with the view of compiling a useful book for the benefit of the public, upon which there has been a totally new arrangement of such matter (per *Ellenborough, C. J.*, *Cary v. Kearsley*, 4 *Esp.* 170).

Honest Intention no Excuse. Sub-rule.—*If, in effect, the great bulk of the plaintiff's publication—a large and vital part of his labour—has been appropriated, and published in a form that will materially injure his copyright; mere honest intention on the part of the appropriator will not suffice* (per *Wood, V.-C.*, *Scott v. Stanford*, *L. R.*, 3 *Eq.* 723).

What is Piracy of Music. Thus, with respect to music, if the whole air be taken it is a piracy, although set to a different accompaniment, or even with variations; for the mere adaptation of the air, either by changing it to a dance, or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same substantially; the piracy is, where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear (*D'Almaine v. Boosey*, 1 *Y. & C.*, *Ex.* 288, per *Lyndhurst*). But, on the other hand, where one composed and published an opera in full score, and after his death B. arranged the whole opera for the piano, it was held that this was an independent

musical composition, and no piracy (*Wood v. Boosey*, *L. R.*, 3 *Q. B.*, *Ex. Ch.* 223).

Plays founded on Novels. To produce the incidents of a novel in the form of a play, is no infringement of copyright, unless the play be printed, or unless the novel was founded on a play, of the copyright of which the author was owner (see *Reade v. Conquest*, 30 *L. J.*, *C. P.* 209; *Tinsley v. Lacy*, 32 *L. J.*, *Ch.* 535; and *Reade v. Lacy*, 30 *L. J.*, *Ch.* 655).

Remedies. **RULE 80.**—Any person causing a book to be printed for sale or exportation, without the written consent of the proprietor of the copyright; or who imports for sale such unlawfully printed book; or with a guilty knowledge sells, publishes, or exposes for sale or hire, or has in his possession for sale or hire, any such book without the consent of the proprietor, shall be liable to a special action on the case at the suit of the proprietor, to be brought within twelve calendar months. And an injunction may be also obtained, to restrain the further infringement.

(1) Thus an injunction may be granted to restrain a person from printing the unpublished works of

another (*Prince Albert v. Strange*, 1 Mac. & Gor. 25). And an action at law may also be maintained for the same cause (*Mayall v. Higby*, 6 L. T., N. S. 362).

(2) An injunction will also be granted, if a person under colour of writing a review copies out so large and important a portion of the work as to interfere with the sale of it: but a reasonable amount of quotation, in order to review the work properly, is allowable (*Campbell v. Scott*, 11 Sim. 31; *Bell v. Walker*, 1 Bro. Ch. C. 450).

Penalties. Besides the remedy by action and injunction, there is also a quasi-criminal remedy in the case of *imported* piracies, by means of penalties. These do not take away the remedy by action or injunction, but are cumulative upon them (sect. 17).

Copyright in Oral Lectures, Dramas, and Works of Art. Besides the copyright in literary works, there is also a copyright in various other productions.

Such are oral lectures, dramatic compositions, engravings, prints, lithographs, drawings, paintings, photographs, and sculptures and models. In a work like the present, space will not permit me to do anything more than sketch out the main heads of the rights of individuals in respect of these productions.

The publication of oral lectures, except those delivered in colleges, &c., is prohibited by 5 & 6 Will.

4, c. 65, without the author's consent; but in order to have the benefit of this act, the lecturer must give previous notice to two justices of the peace.

Right of Representation of Dramatic and Musical Works. The right of *representing* dramatic and musical compositions is vested in the author or composer, and his assigns, for the same period as in literary compositions, by 5 & 6 Vict. c. 45, s. 20, which also imposes penalties upon any person performing them without the written leave of the author or composer. These penalties are not cumulative, but only alternative.

Assignment of Copyright does not include Right of Representation. I may mention, that the assignment of the copyright of a book containing dramatic or musical compositions is only an assignment of the right of multiplying copies of it, and not of the right of representing it (sect. 22), unless at the time of registering the assignment the same is expressly stated. But a mere assignment of the right of representation does not seem to require registration (*Lacy v. Rhys*, 22 L. J., Q. B. 157).

Engravings. Engravings are protected by the statutes 8 Geo. 2, c. 13; 7 Geo. 3, c. 38; and 17 Geo. 3, c. 57.

Sculpture. Sculptures and models by 38 Geo. 3, c. 71, and 54 Geo. 3, c. 56.

Designs. Useful and ornamental designs by "The Copyright of Designs Act, 1858," "The Designs Acts," 1842, 1843, and 1850, and "The Protection of Inventions Act, 1858."

Works of Art. Paintings, drawings and photographs by 25 & 26 Vict. c. 68.

Conclusion. Here this summary statement of the law relating to torts must conclude. In compiling it, my design has been throughout to present to the reader an intelligible and orderly arrangement of the principles upon which the law depends.

It must not be imagined that I put forth this work as in any way a digest of the subject. Far from it. Were a digest alone wanted, nothing more could be desired than Mr. Addison's exhaustive treatise. I only claim for this the place of a guide book or manual, in which will, I think, be found all that is needful in the ordinary every-day practice of a solicitor's business.

Neither must the student imagine that such injuries as are not named in this or any other treatise are therefore not remediable by the law, for wrongs are infinitely various. Let him in such cases recollect the observation of Cicero, "*Erat enim ratio profecta a rerum naturâ, et ad recte faciendum impellens, et a delicto avocans: quæ non tum denique incipit lex esse cum scripta est, sed tum, cum orta est.*"

Lastly, although it has been my chief endeavour to render the work accurate and trustworthy, yet, to conclude in the words of Littleton, "I will not that thou believe that all I have said is law, for that will not I take upon me nor presume; but of those things that be not law, inquire and learne of my wise masters learned in the law. Notwithstanding that certain things that be noted and specified be not law, yet such things shall make thee more apt and able to understand, and learne the arguments and the reasons of the law: for by the arguments and reasons in the law, a man may more sooner come to the certaintie and to the knowledge of the law."

FINIS.

INDEX.



- ABATEMENT,
of nuisance, 198.
not proper remedy to prevent prospective nuisance, 199.
not proper remedy of commoner in respect of overstocked warren, *ib.*
- ACCIDENT,
if inevitable, not actionable, 120.
actionable, if preventible, *ib.*
when occurrence of, *prima facie* evidence of negligence, 146.
- ACT OF GOD excuses what would be otherwise actionable, 12.
- ACTION, cannot be brought twice for same wrong, 63.
- ADMINISTRATOR, title of, to personal property, dates from death of intestate, 214.
- ADOPTION. *See* RATIFICATION.
- ADULTERY,
damages for, 149.
application of damages, 150.
mitigation of damages for, *ib.*
wife's previous adultery with other men, 151.
secrecy of marriage, *ib.*
evidence of wife's having enticed co-respondent, *ib.*
connivance or indifference of petitioner, a bar to claim for damages, *ib.*
- ADVERTISEMENTS, criticism of, privileged, 98.
- ADVICE, confidential, a privileged communication, 97.
- AGGRAVATION. *See* DAMAGES.
- ANIMALS. *See* FEROCIOUS ANIMALS.
injuries done to, 209.
trespasses of, *ib.*
injuries to, while trespassing, when tortious, 211.
killing, in self-defence, justifiable, 212.

ARREST. *See* IMPRISONMENT.

malicious, liability for, 115.

what is malicious, *ib.*caused by false statement or suppression, *ib.*caused by false affidavit, *ib.***ASSAULT AND BATTERY,**master responsible for, if committed by servant within the
general scope of authority, 33 *et seq.*

damages for, 56, 124.

aggravation of damages for, 66.

mitigation of damages for, *ib.*

causing death, 118.

definition of assault, *ib.*menacing, *ib.*ability to do harm, necessary, *ib.*attempt necessary, *ib.*

committed in sport, not actionable, 119.

definition of battery, *ib.*may be occasioned by anything set in motion by defendant, *ib.*

battery, voluntarily suffered, not actionable, 120.

mayhem, *ib.*intention to commit, immaterial, *ib.*caused by lawful act, actionable, *ib.*

caused by inevitable accident, excusable, 121.

general immunity from, *ib.*committed in self-defence, justifiable, *ib.*committed in mere retaliation, not justifiable, *ib.*committed in defence of property, justifiable, *ib.*

of pupil for sake of correction, justifiable, 122.

in order to stop breach of the peace, justifiable, *ib.*in order to arrest night offender, felon, malicious trespasser or
vagrant, justifiable, *ib.*in order to expel disturber of congregation, justifiable, *ib.*by master of ship, *ib.*by officer of law, *ib.*unnecessary handcuffing of prisoner is, *ib.*proceedings before justices release civil proceedings, *ib.*

limitation of actions for, 124.

ATTORNEY, slandering an, 92.**BAIL,** arrest of principal by his obligor, lawful, 106.**BAILEE,**

may maintain trover and trespass, 213.

destruction of goods by a conversion, 210.

sale of goods by assignees of, reverts possession in bailor, 213.

may set up *ius tertii*, when, 214.

loss of goods by, no excuse, 218.

BAILMENT, remarks as to contract of, 27.

BAILOR,

may bring trespass against purchaser, where bailee has sold goods, 211.
may maintain trover for conversion of goods by bailee, 210, 212.

BANKRUPT BAILEE, action against assignees of, by bailor for selling bailed goods, 213.

BATTERY. *See* ASSAULT AND BATTERY.

BODILY INJURIES. *See* ASSAULT.

caused by nuisances. *See* NUISANCE.

caused by negligence. *See* NEGLIGENCE.

BOOKS, copyright in. *See* COPYRIGHT.

BRICK-BURNING, near highway a public nuisance, 126.

CAMPBELL'S (LORD) ACT, 113 *et seq.*

gives right of action to relatives of person killed through another's default, *ib.*

who may sue in case executor does not, 144.

when action maintainable, 145.

for whose benefit maintainable, *ib.*

jury must apportion damages, *ib.*

plaintiffs must have suffered some pecuniary loss, *ib.*

not maintainable when deceased received compensation before death, 146.

death must be caused by the act for which compensation claimed, *ib.*

action must be brought within twelve months, *ib.*

CANDIDATE for office, character of, privileged communication, 97.

CARRIER liable for misfeasance to a person with whom he has not contracted, 26.

CATTLE. *See* TRESPASS.

when injury is done to, by dog, scienter need not be shown, 143.

word includes horses, *ib.*

CHARACTER,

fraudulent, when actionable, 13.

of servant when a privileged communication, 97.

of candidate for office, given to a voter or elector, a privileged communication, *ib.*

CHARACTER—*continued*.

- evidence of plaintiff's bad character in mitigation of damages in defamation, 65.
- of daughter's loose character in mitigation of damages in seduction, 64, 157.
- of wife's bad character in mitigation of damages in adultery, 151.

CHASTISEMENT, plea of reasonable, 122.

CHATTELS, trespass to, and conversion of. *See* TRESPASS; and *see* WRONGFUL CONVERSION.CHILDREN of deceased parent, action by. *See* CAMPBELL'S (LORD) ACT.

CLERGYMAN, imputing unchastity to a beneficed, is actionable per se, 92.

COMMITMENT,

- for contempt of court, 112.
- by judges of inferior courts, *ib*.

COMMON,

- disturbances of, threefold, 196.
- putting beasts on to by person not a commoner, or putting of uncommonable beasts on to by a commoner, *ib*.
- prescriptive right to put uncommonable beasts on to, *ib*.
- without prescription uncommonable beasts may be distrained damage feasant, *ib*.
- surcharging, what is, 197.
- remedy of lord and commoners for, *ib*.
- obstructing, *ib*.
- remedy for, 198.

COMMON EMPLOYMENT, meaning of. *See* MASTER AND SERVANT.

CONCEALMENT, when fraudulent, 13.

CONSEQUENTIAL DAMAGES. *See* DAMAGES.

CONSTABLE,

- cannot, in general, arrest without a warrant, 106.
- must have warrant with him, 108.
- may arrest without warrant,
 - on reasonable suspicion of felony, 106.
 - for breach of peace, even after affray over, in order to take offender before a justice, 107.
 - for night offences, 108.
 - for malicious injuries, *ib*.
 - for offering goods for pawn suspiciously, *ib*.
 - for acts of vagrancy, *ib*.

CONSTABLE—*continued*.

- local acts empowering constables, 109.
- protected if acting ministerially for a court having jurisdiction (or *prima facie* jurisdiction in certain cases), 111, 112.
- special protection of, in executing warrants of justices without jurisdiction, 114.
- limitation of actions against, 117.
- notice of action to, *ib.*
- power of, appointed by municipal corporations, *ib.*
- payment of money into court by, *ib.*
- venue in actions against, local, *ib.*

CONTINUAL CLAIM no bar to statute in ejectment, 171.

CONTINUING TORTS,

- commencement of period of limitation in, 54.
- fresh action may be brought for, until they are stopped, *ib.*

CONTRACT,

- torts arising out of, 24.
- privity necessary in order to recover for torts arising out of, 25.
- damages in torts arising out of, 69.

CONTRACTOR, employer not in general liable for nuisance committed by, or negligence of, 38.

CONTRIBUTORY NEGLIGENCE. *See NEGLIGENCE.*

CONVERSION. *See WRONGFUL CONVERSION.*

COPYRIGHT,

- definition of, 234.
- former law of, *ib.*
- at common law, 235.
- law of, at present time, *ib.*
- none in immoral or fraudulent works, 236.
- meaning of book, *ib.*
- in part of a book and not in residue, *ib.*
- none in a mere word, *ib.*
- what is piracy of, 237.
- carefully revising and correcting old matter no infringement, *ib.*
- new arrangement of old work no infringement, *ib.*
- honesty of intention immaterial, 238.
- what is piracy of, in music, *ib.*
- plays founded on novels, 239.
- remedies for infringement of, *ib.*
- injunction to prevent publication of unpublished manuscript, *ib.*
- piracy by review, 240.
- in oral lectures, *ib.*

COPYRIGHT—*continued*.

- right of representing dramatic and musical compositions not included in assignment of copyright of, 241.
- in engravings, *ib*.
- in sculpture, *ib*.
- in designs, 242.
- in works of art, *ib*.

COUNSEL,

- opinion of, no excuse for malicious prosecution, 102.
- statements of, how far privileged communications, 96.

CRIME. *See* DEFAMATION.CRITICISM. *See* DEFAMATION.

DAMAGE,

- without wrongful act, not actionable, 5.
- when necessary, *ib*.

DAMAGE FEASANT,

- cattle may be distrained when trespassing, 160.
- unless tended at time, *ib*.

DAMAGES, measure of, in actions of tort, 55.

- (1) *For injuries to person and reputation*.
 - for false imprisonment, *ib*.
 - for adultery, 149.
 - for seduction, 56, 157.
 - for assault and battery, 124.
 - for defamation, *ib*.

mistake or ill-feeling of jury, 57.

aggravation and mitigation of, 64.

- for adultery, 151.
- for seduction, 64.
- for defamation, 65.
- for false imprisonment, 66.
- for battery, *ib*.

consequential damages, 59.

- loss of business, *ib*.
- medical expenses, *ib*.
- loss of property through agitation, *ib*.
- under Lord Campbell's Act, 60.
- injury to trade, *ib*.

prospective damages may be given, 63.

continuing torts, 64.

- (2) *For injuries to property*, 57.
 - compensatory in character, *ib*.
 - injury to horse, *ib*.
 - for wrongful conversion, 58.
 - infringement of patent, *ib*.

DAMAGES --*continued*.

- aggravation and mitigation, 64.
 - insolence, 67.
 - wrongful seizure, *ib.*
 - causing suspicion of insolvency, *ib.*
 - return of goods, *ib.*
- where plaintiff only bailee, 68.
- consequential damages, 59.
 - hiring substitute in place of a chattel, 61.
 - trespass, *ib.*
 - infectious disease, *ib.*
 - flooding lands, 62.
 - having been obliged to pay damages to third party, *ib.*
- presumption of amount of damage against a wrongdoer, 68.
- in torts founded on contract 69.

DAMNUM, definition of, 6, n.

DANGER, trespass under the influence of a pressing, 7, 14.

DANGEROUS substances brought on to land must be kept at peril of bringer, 13.

DAUGHTER, action for seduction of. *See* SEDUCTION.

DECEASED person. *See* CAMPBELL'S (LORD) ACT.

DECEIT. *See* FRAUD.

DEFAMATION, 83.

- oral or written, *ib.*
- what constitutes, *ib.*
- falsity, 84.
- disparagement, what is, *ib.*
- untrue accusation of fraud incident to an actually committed illegal act actionable, 85.
- construction of words in natural sense, *ib.*
- ironical words, *ib.*
- publication, 86.
- intention to publish immaterial where negligence, *ib.*
- functions of court and jury as to publication, *ib.*
- malice, *ib.*
- actual damage when necessary, 87.
 - when too remote, 88.
 - imputation of unchastity, 89.
 - imputation of crime actual damage of itself, 90.
 - imputation of mere breach of trust aliter, 91.
 - imputation of unfitness for society, *ib.*
 - imputation of misconduct in business, 66.
- repetition of defamation, 92.
 - printing of, 93.
 - newspaper proprietors protected, 94.

DEFAMATION—*continued*.

- privileged communications, 94.
- functions of court and jury, 95.
- parliamentary proceedings, 96.
- judicial proceedings, *ib.*
- confidential advice, 97.
- criticism, *ib.*
- criticism of public men, 98.
- limitation of actions for, 98.
- damages. *See* DAMAGES.

DEFECT. *See* FRAUD.DEFENCE. *See* ASSAULT.

DESIGNS, copyright in, 242.

DETINUE,

- action of, 218.
- judge may order return of specific goods in, *ib.*

DISABILITY,

- suspends commencement of period of limitation, 53.
- when taking place subsequent to commencement of period of limitation, is no bar, 54.

DISPOSSESSION,

- definition of, 166.
- plaintiff must rely on strength of his own title, 167.
- mere possession evidence of title for defendant, *ib.*
- plaintiff's title need not be indefeasible, *ib.*
- ius tertii* available by defendant, but not by plaintiff, *ib.*
- landlord claimant need not prove his title, 168.
- tenant may show expiration of landlord's title, *ib.*
- master and servant, *ib.*
- licensor and licensee, *ib.*
- claimant's title must be legal, not equitable, *ib.*
- limitation, 169.
 - disability, *ib.*
 - acknowledgment of title, 170.
 - ecclesiastical corporations, *ib.*
 - commencement of period of, *ib.*
 - discontinuance of possession, 171.
 - occupation of servant no discontinuance, *ib.*
 - mere entry and continual assertion of claim no bar to running of statute, *ib.*

DOGS,

- noisy, 177.
- liability of owner for injuries by. *See* FEROCIOUS ANIMALS.
- injury to, 209.
- killing in self-defence, 212.
- killing in defence of sheep or cattle, *ib.*
- killing in defence of game, when justifiable, *ib.*

DOOR,

- careless shutting, of railway carriages, 138.
- contributory negligence by leaving hand on, *ib.*

DRAMATIC COMPOSITIONS. *See* COPYRIGHT.

EASEMENT,

- what is an, 173; *and see* NUISANCE.
- grantee of, may enter upon servient tenement in order to repair, 161.

EJECTMENT. *See* DISPOSSESSION.

ENGINES, near highway, a public nuisance, 126.

ENGRAVINGS, copyright in, 241.

ENQUIRIES, by the finder of a chattel, before delivering to true owner, is no conversion, 217.

EX DAMNO SINE INJURIA, &c., 5.

FALSE IMPRISONMENT. *See* IMPRISONMENT, CONSTABLES, JUSTICES.FALSE REPRESENTATION. *See* FRAUD.FELLOW SERVANTS. *See* MASTER AND SERVANT.

FELONY, remedy by action for, suspended until criminal trial ended, 22.

- how suspension may be effected, *ib.*

FENCES, non-liability for trespass of cattle if adjoining owner bound to keep in repair, 159.

FERRE NATURE, trespasses of animals, 161.

FEROCIOUS ANIMALS,

- liability for injuries caused by, 141.
- scienter the gist of the action for, *ib.*
- presumption of scienter, *ib.*
- when scienter not presumed, *ib.*
- proof of scienter, 142.

FIRE, negligent keeping of, 135.

FIREWORKS near highway, a public nuisance, 126.

FRAUD,

- when actionable, 201.
- false representation of value of business to a purchaser, *ib.*
- false representation of soundness of a dangerous instrument, 202.

FRAUD—*continued*.

- meaning of fraudulent, 202.
- must be moral turpitude, *ib.*
- recklessness sufficient, *ib.*
- liability for fraud of agent, 203.
- fraudulent character must be in writing to be actionable, 205.

FRAUDULENT CONCEALMENT,

- when actionable, 205.
- concealing infectious disease in pigs, 206.
- concealing defect in ship, *ib.*
- mere abstinence from mentioning a known defect is not actionable, 207.
- an industrious concealment aliter, *ib.*
- plastering over a defective wall, *ib.*
- expression, "with all faults," 208.

FUNERAL EXPENSES not recoverable under Lord Campbell's Act, 146.

GAME,

- property in, not absolute, 210.
- killing dog in order to preserve, when justifiable, 212.

GOODS. *See* TRESPASS *and* WRONGFUL CONVERSION *and* NEGLIGENCE.

GUN, explosion of a warranted, 26.

HIGHWAY,

- obstruction of, 8.
- dedication of, to public not a grant of the land, 164.
- trespass may be maintained by grantor of, *ib.*

HORSE,

- accident caused by a runaway, excusable, 11.
- injuries to, by dog, 143.
- is included in the word cattle, *ib.*
- measure of damages for injury to, 57.

HOUSE, liability for ruinous state of. *See* NUISANCE.

ICE, when a public nuisance, 17, 18.

IMMORALITY,

- verbal imputation of, against a beneficed clergyman, a slander per se, 67.
- verbal charge of, in general not actionable without proof of special damage, 89.

IMPRISONMENT,

- what constitutes, 105.
- moral restraint constitutes, *ib.*
- total restraint necessary, *ib.*
- by judges and magistrates. *See* JUDGE.
- by private persons and constables, 106.
 - general immunity from, *ib.*
 - arrest of bail by his surety, *ib.*
 - arrest of suspected felon when justifiable, *ib.*
 - what suspicion sufficient, *ib.*
 - arrest of breakers of the peace, 107.
 - arrest of night offenders, 108.
 - arrest of malicious injurers, *ib.*
 - arrest of suspected persons offering goods for pawn, *ib.*
 - arrest of vagrants, *ib.*
 - acts of vagrancy, *ib.*
- in other cases warrant necessary, *ib.*
 - certain offenders can ~~only~~ be arrested *flagrante delicto*, 109.
 - particular powers of arrest given to individuals, *ib.*
 - general protection of persons sitting courts of justice in motion, 111.
 - no protection if court has no jurisdiction, *ib.*
- for contempt of court, 112.
 - by county court judge, 113.
 - by justice, *ib.*
- habeas corpus, 115.
- (f) limitation of action for, 116.
 - is a continuing tort, *ib.*
 - in case of justices and constables, 117.
- notice of action to justices and constables, 116 *et seq.*
- damages for, 55.
- aggravation of damages, 66.

INCORPOREAL HEREDITAMENT, injury to. *See* SUPPORT,
LIGHT, WATERCOURSE, WAY, and COMMON.

INEVITABLE ACCIDENT. *See* ACCIDENT.

INFERIOR COURT, power of, to commit for contempt, 113.

INJUNCTION,

- remedy by, 71.
- interlocutory or perpetual, *ib.*
- injuries remediable by, *ib.*
- noxious fumes, 72.
- noise, *ib.*
- obstruction of light and air, *ib.*
- cases where damages given instead, 73.
- not granted for a mere trespass, 75.
- where waste also aliter, *ib.*
- pollution of lake, *ib.*

INJUNCTION—*continued.*

deprivation of support, 75.
 trade mark, patent, and copyright, *ib.*
 not granted to restrain libel, *ib.*
 publication of private letters, 76.
 where injury merely threatened, *ib.*
 granted even where it will inconvenience public, 77.
 mandatory, *ib.*
 delay, 79.

INJURIA,

is always necessary to a tort, 5.
 when no tort without special damage, *ib. et seq.*

INJURIÆ, classification of, 9.

INSANITY, imputation of, defamatory, 85.

INTENTION, not material in torts, 15 *et seq.*INVENTOR. *See* PATENT.

INVOLUNTARY TORTS, when actionable, 10.

JOINT OWNERS, trespasses of, towards each other, 165, 216.

JUDGE,

statements of, absolutely privileged communications, 96.
 not liable for a wrongful imprisonment committed erroneously
 if acting within his jurisdiction, 109.
 who is a, 111.
 jurisdiction of, how constituted, *ib.*
prima facie jurisdiction is sufficient if through ignorance of
 some fact of which he could have no knowledge he has no
 jurisdiction, 112.
 power of, to commit for contempt, *ib.*
 of county court, power of, 113.

JUDICIAL PROCEEDINGS, how far privileged communications, 96.

JURISDICTION. *See* JUDGE.

JUS TERTII,

defendant in ejectment may set up, but not claimant, 167.
 may be set up in trover where defendant not bailee or agent,
 214.

JUSTICE OF THE PEACE. *See* IMPRISONMENT.JUSTIFICATION. *See* DEFAMATION, ASSAULT, TRESPASS, IMPRISONMENT.

LANDLORD,

- title of, cannot be disputed by tenant, 168.
- may maintain action for injury to the reversion, 200.
- when liable for nuisance on demised premises, 129 *et seq.*
- written acknowledgment of title of, a bar to the Statute of Limitations, 170.
- occupation of servant of, equivalent to personal occupation, 168.

LECTURES, copyright in, 211.**LIBEL**, no injunction to restrain a, 75. *See* DEFAMATION.**LIBERUM TENEMENTUM**, plea of, in trespass to land, 167.**LICENSEE,**

- a mere, stands in the position of one of the family as regards injuries caused by nuisances, 132.
- possession of, is the possession of the licensor, 168.

LIEN,

- sale of goods held under, a wrongful conversion, 213.
- damages for sale of goods held under, *ib.*

LIGHT AND AIR,

- no right to, *ex jure nature*, 186.
- no proof of special damage necessary, *ib. et seq.*
- no excuse that plaintiff has contributed to the diminution, 188.
- enlargement of ancient lights, *ib.*
- dominant tenement must be a building, *ib.*
- a man cannot obstruct on property granted by him to another, *ib.*
- rights of two vendees from same vendor, 189.
- right to, lost by giving licence to another to do an act, the natural consequence of which is an obstruction of, *ib.*

LIME KILN, when a public nuisance, 126.**LIMITATION,**

- of actions of tort, 51.
- reasons for, *ib.*
- commencement of period of, 52.
- when tort consists of actual damage, commencement of period of, *ib.*
- conversion, 53.
- disability, *ib.*
- disability arising subsequently to commencement of period, 51.
- commencement of period when tort continuing, *ib.*
- in particular cases see under the several headings of those cases.

LOSS OF SERVICE. *See* SEDUCTION.

MAGISTRATE. *See* JUSTICE.

MALICE. *See* DEFAMATION.

MALICIOUS ARREST. *See* IMPRISONMENT.

MALICIOUS PROSECUTION,

meaning of, 99.

what constitutes, *ib.*

malice generally implied, *ib.*

knowledge of plaintiff's innocence evidence of malice, 100.

knowledge of defendant that he was in the wrong, evidence of malice, *ib.*

to stop plaintiff's mouth, *ib.*

counsel's opinion no excuse for, 102.

not actionable if reasonable cause for suspicion existed, 101.

want of probable cause, never implied in actions for, *ib.*

subsequent malice of the defendant, 100.

adoption of proceedings already commenced, *ib.*

where defendant bound over by a magistrate to prosecute, no excuse for, *ib.*

act of magistrate in general an excuse, 103.

aliter where specific charge made, *ib.*

causing search warrant to issue, *ib.*

setting aside of proceedings, a condition precedent to action for, 102.

MAN-TRAPS, when illegal, 126.

MANUFACTURE. *See* PATENT.

noxious or offensive, an actionable nuisance, 175.

MANUSCRIPT, copyright in unpublished, 239.

MAP, copyright in, 236.

MASTER AND SERVANT,

as to enticing and seducing servants. *See* SEDUCTION.

master in general has no remedy against one who injures servant *ex contractu*, 25.

general liability of master for torts of, 29.

accidents occasioned by carelessness of servant, *ib.*

master not liable for illegal act of servant, 31.

master liable for wilful act of servant if within the general scope of his authority, *ib.*

liability of master for assaults of servant committed in scope of his employment, 33, 34, 35.

master not liable for servant's torts when committed outside or beyond scope of his employment, 30, 33.

master not liable for injuries caused by servant while driving master's carriage on business of his own, *ib.*

MASTER AND SERVANT—*continued*.

- ratification of servant's tort, 36.
- meaning of term servant, *ib.*
- master not liable for torts committed by persons employed by servant, *ib.*
- contractor or intermediate employer liable for torts of workmen, 37, 38.
- job-master liable, and not hirer of horses, *ib.*
- cases where employer and contractor liable, 38 *et seq.*
- temporary employment by a third party excuses master, 40.
- unauthorized delegation by a servant of his duties excuses master from delegates' torts, *ib.*
- when master liable for injuries caused by servant to fellow-servant, 42.
- meaning of common employment, 43 *et seq.*
- personal negligence of master, 46.
- servant's knowledge of danger, when a bar, 48, 49.
- volunteers, 49.

MAXIMS OF LAW, 3.

MEASURE OF DAMAGES. *See* DAMAGES.MEDICAL EXPENSES. *See* CAMPBELL'S (LORD) ACT.

MEDICAL MEN,

- negligence of, 24, 26.
- slandering, 92.

MEDICINES, duty of ships to have on board, 19.

MINE,

- causing subsidence of surface by excavating, 175—184.
- flooding of, by water brought by defendant on to his land actionable without proof of negligence, 13.

MISFEASANCE, liability for, 27.

MISREPRESENTATION. *See* FRAUD.

MISTAKE, no justification, 14.

MITIGATION. *See* DAMAGES.MURDER. *See* DEFAMATION.

MUSICAL COMPOSITIONS, assignment of copyright in, is no assignment of the right of public representation of them, 241.

NECESSITY, right of way of, 194.

NEGLIGENCE,

- when actionable, 135.
- what constitutes, *ib.*
- onus of proof of, 145.
- contributory, 137.
- where contributory, affords no excuse, 139.
- contributory, in infants, 140.
- keeping ferocious animals. *See FEROCIOUS ANIMALS.*
- actions by representatives of a person killed by. *See CAMPBELL'S (LORD) ACT.*
- duties of judge and jury in actions for, 147.

NEWSPAPERS. *See DEFAMATION.*NOISE. *See NUISANCE.*NOTICE of action to justices and constables, 116 *et seq.*NOXIOUS TRADE. *See NUISANCE.*

NUISANCE,

- (1) *Causing Injury to the Person*, 125.
 - definition, *ib.*
 - excavations near roads, *ib.*
 - noxious fumes, *ib.*
 - foul cesspools, 126.
 - spring-guns and man-traps, *ib.*
 - even trespassers injured by spring-guns and man-traps may maintain action, *ib.*
 - spring-guns for protection of dwelling-houses at night, lawful, *ib.*
 - pit or engine near highway, illegal, *ib.*
 - windmills and fires for burning ironstone near highway nuisances, 126.
 - letting off fireworks near highways, *ib.*
 - injuries caused by quarries at a distance from highway not actionable, 127.
 - ruinous premises, *ib.*
 - where nuisance subsists negligence is immaterial, *ib.*
 - landlord not liable for injuries caused to tenant by ruinous premises, 129.
 - aliter in case of fraud, *ib.*
 - tenant only generally liable to third parties, *ib.*
 - landowner liable if he authorized the nuisance, *ib.*
 - nuisances on or near private ways, 131.
 - ruinous railway works, 132.
 - act of God justification, *ib.*
 - dangerous canals, *ib.*
 - injuries to guests through a subsisting, *ib. et seq.*
 - injuries to persons coming on business, *ib.*
 - injuries through improper condition of railway stations, 133.
 - ill-lighted stations, *ib.*
 - limitation, 134.

NUISANCE—*continued.*

(2) *Causing Injury to Real Property.*

- definition of a, 174.
- general principle applicable to, *ib.*
- affecting corporeal hereditaments, 175.
- disgusting fumes, *ib.*
- noisy trade, *ib.*
- the nuisance must be material, 176.
- noisy entertainments, *ib.*
- other examples, 177.
- overhanging eaves, *ib.*
- overhanging trees, *ib.*
- pig-stys, *ib.*
- noisy dogs, *ib.*
- reasonableness of place when no excuse, *ib.*
- distinction between injury to property and annoyance in its user, *ib.*
- immaterial whether plaintiff goes to the nuisance or it to him, *ib.*
- prescriptive right to commit, 180.
- easements, 173.
- profits à prendre, *ib.*
- customs, *ib.*
- title to easements, 171.
- disturbance of right to support, 180.
- right may be released by agreement, 181.
- the damage must be material, *ib.*
- railway and canal companies have no right of support, 181.
- subterranean water, *ib.*
- land burdened with buildings, *ib.*
- support from adjoining houses, 185.
- quere whether right can be gained by prescription, 186.
- right to light and air. *See* LIGHT AND AIR.
- right to watercourse. *See* WATERCOURSE.
- right to ways. *See* WAY.
- remedy by abatement, 198.
- remedy by abatement not applicable to prospective nuisances, 199.

OBSTRUCTION of entry to places of business, 7, 8.

of road, 8.

of light and air. *See* LIGHT AND AIR.

OMNIBUS, fraudulent imitation of, by a rival proprietor, 227.

OUSTER. *See* DISPOSSESSION.

PARTY WALL, trespass to, 165.

PATENT, how obtained, 228.

conditions to valid grant of, 229.

what is a manufacture entitled to, *ib.*

newness of manufacture necessary to, 230.

rule in *Hill v. Evans*, *ib.*prior knowledge of the public fatal to, *ib.*new combination of old elements, *ib.*application of a known instrument to analogous purposes, *ib.*

newness only applies to the United Kingdom, 231.

novelty inferred where utility very great, *ib.*meaning of true and first inventor, *ib.*

secret prior knowledge of another no bar to, 170.

manufacture must be of general public utility, 232.

producing old articles in a new way when a new manufacture, *ib.*specification, *ib.*

remedy for infringement, 233.

PATENT DEFECT. *See* FRAUD.

PERJURY, no action lies for consequences of, 96.

imputation of, not actionable, unless made with reference to a judicial inquiry, 91.

PERSONAL PROPERTY, trespass to. *See* TRESPASS.PIGSTY. *See* NUISANCE.

POSSESSION, necessary to maintain trespass, 163.

dates back to accrual of title, 164.

prima facie evidence of title, *ib.*

in general good against all but true owner, 167.

meaning of discontinuance of, 170.

disturbance of, with respect to goods, 209.

necessary to maintain trespass for goods, 213.

follows title in personal property, *ib.*

what, suffices as against a wrongdoer, 214.

injuries to goods whilst in another's, 215.

PRESCRIPTION. *See* LIGHT AND AIR, NUISANCE, SUPPORT, WATERCOURSE, WAY, COMMON.

PRINTER liable for libel, 93.

PRINTING of an oral slander by unauthorized third party, 91.

PRIVATE WAY. *See* WAY.PRIVILEGED COMMUNICATIONS. *See* DEFAMATION.

PRIVITY in quasi torts, 25.

PROBABLE CAUSE, want of, in malicious prosecution, the gist of the action, 101.

PROBABLE CONSEQUENCE, every man presumed to intend the, of his acts, 16.

PROFESSIONAL MEN, negligence of, 21.

PUBLICATION. *See* DEFAMATION.

PUBLIC NUISANCE. *See* NUISANCE.

QUARRY, injuries caused by falling into, when actionable and when not, 126.

RAILWAY COMPANY. *See* NEGLIGENCE, MASTER AND SERVANT, and NUISANCE.

RATIFICATION. *See* MASTER AND SERVANT.

RECAPTION, 217.

RECKLESS CONDUCT, liability for consequences of, 16.

REMOTENESS of damage, 11, 16.

REPLEVIN, action of, 219.

RESULT of wrongful act, if naturally in sequence, may be sued on, 18.

REVERSIONER,

may enter into and inspect premises, 161.

remedy of, for injury to land, 200.

remedy of, for trespass, accompanied by a denial of title, *ib.*

remedy of, for obstructions, *ib.*

no remedy given to, for mere transient trespasses or nuisances, *ib.*

some injury to the reversion must be proved, *ib.*

RIVER. *See* WATERCOURSE.

RUINOUS PREMISES. *See* NUISANCE.

SALE,

wrongful, is a conversion, 212, 213.

of goods held under a lien is a conversion, 213.

of goods in market overt passes property, 221.

unless seller prosecuted to conviction, *ib.*

SCIENTER. *See* FEROCIOUS ANIMALS.

SCULPTURE, copyright in. *See* COPYRIGHT.

SEDUCTION,

- action for, whence arising, 152.
- of servant from master's employ is actionable, *ib.*
- contract of service when implied, 153.
- any profit gained by, may be recovered, *ib.*
- debauching plaintiff's daughter, *ib. et seq.*
- proof of loss of service necessary to sustain an action for, *ib.*
- contract to pay wages unnecessary to create relation of master and servant, 154.
- small services suffice, *ib.*
- when daughter lives with her father and is a minor, service is presumed, *ib.*
- aliter where the daughter acts as another's housekeeper, *ib.*
- aliter where she supports her father, *ib.*
- where service to another is put an end to, the right of the parent revives, *ib.*
- temporary visit no termination of service, 155.
- relation of master and servant must subsist at time of seduction, *ib.*
- death of daughter, *ib.*
- if parent helps to bring about his own dishonour he cannot recover, 156.
- who may be plaintiff, *ib.*
- damages in, 157.
 - aggravation of, *ib.*
 - breach of promise of marriage not matter of aggravation, *ib.*
 - mitigation of, *ib.*
 - previous immorality or looseness, *ib.*
- limitation, 158.

SERVANT. *See* MASTER AND SERVANT.

- may sue for loss of luggage although master paid the fare, 26.

SHEEP, injuries to, by dog actionable without proof of scienter, 143.

SLANDER. *See* DEFAMATION.SPRING-GUNS. *See* NUISANCE.

STATUTORY DUTIES,

- breaches of, 19.
- remedy by action for, not taken away by reason of a penalty being attached, *ib.*
- aliter if penalty only recoverable by party aggrieved, 20.
- where no right created in favour of the plaintiff there is no action maintainable, 21.
- copyright, *ib.*

SUPPORT. *See* NUISANCE (2).

TENANT. *See* LANDLORD.

- cannot dispute landlord's title, 168.
- but may show that title has expired, *ib.*

TITLE. *See* TRESPASS and DISPOSSESSION.**TORT,**

- definition of, 4.
- arising out of contract, 24.

TRADE MARK,

- definition of, 222.
- nature of the title to relief, 223.
- injunction to restrain infringement of, 225.
- damages, *ib.*
- account of profits, *ib.*
- assignment of, 227.
- selling articles under seller's own name, *ib.*
- registration necessary before bringing an action, 228.

TRESPASS, ratification of a, 36.

- (1.) *To Lands (quare clausum fregit)*, 159.
 - definition, *ib.*
 - what it consists of, *ib.*
 - driving nails into wall is, *ib.*
 - by straying cattle, *ib.*
 - any user going beyond that authorized, 160.
 - remedy for, by distress damage feasant, *ib.*
 - committed by escape of dangerous substances, 12 *et seq.*, 160.
 - by escape of water brought by defendant on to his land, *ib.*
 - of animals *ferae naturae*, 161.
 - in retaking goods, justifiable, *ib.*
 - in driving cattle off plaintiff's land, when justifiable, *ib.*
 - in distraining for rent, justifiable, *ib.*
 - in executing legal process, justifiable, *ib.*
 - by reversioner inspecting premises, justifiable, *ib.*
 - in escaping a pressing danger, justifiable, *ib. et seq.*
 - by grantee of easement for the purpose of making repairs, justifiable, 161.
 - under due legal authority, justifiable, 162.
 - plea of *liberum tenementum*, *ib.*
 - trespassers *ab initio*, *ib.*
 - intention immaterial, 14.
 - possession necessary to maintenance of action for, 163.
 - when two people are in adverse possession, possession is in person entitled, *ib.*
 - possession dates back to title, 164.
 - onus of proof of title lies on *prima facie* trespasser, *ib.*
 - when surface and subsoil in different owners, *ib.*
 - to highways, *ib.*

TRESPASS—*continued.*

- (1) *Trespass to Lands (quare clausum fregit)*—*continued.*
 - of joint owners, 165.
 - carrying away of soil by one of two joint owners, *ib.*
 - reasonable working of coal mine by joint owner, *ib.*
 - injuries to party-walls, *ib.*
 - continuing, 166.
 - damages for, 58.
 - aggravation of damages, 64.
 - limitation of actions for, 166.
- (2.) *To Goods and Chattels (de asportatis bonis).*
 - what is, 209.
 - to animals, *ib.*
 - good intention no excuse, 210.
 - by wrongful distress, *ib.*
 - destruction of goods by bailee, *ib.*
 - excessive sale by sheriff, *ib.*
 - killing game or animals *feræ naturæ*, *ib.*
 - purchasing goods without title, 211.
 - no trespass if plaintiff in fault, *ib.*
 - no remedy if animals get injured whilst trespassing, unless defendant used unreasonable force, *ib.*
 - wrongful alteration or mixing up of goods prevents the person altering from maintaining an action for the materials or goods with which the alteration was made or mixed, *ib.*
 - unauthorized painting of carriage, *ib.*
 - trespass in defence of property, 212.
 - shooting a trespassing dog, when allowable, *ib.*
 - trespass in self-defence, *ib.*
 - trespass in exercise of right, *ib.*
 - trespass in exercise of legal authority, *ib.*
 - possession necessary to maintenance of action, 213.
 - reversioner cannot sue for, *ib.*
 - possession follows title, *ib.*
 - bailee delivering goods to an unauthorized person reverts possession in bailor, *ib.*
 - sale of bailor's goods by assignees of bailee reverts possession in bailor, *ib.*
 - sale by a person having a lien is a trespass, *ib.*
 - damages for sale of goods by person having a lien, 214.
 - administrator may maintain trespass for injuries to goods committed before grant of administrator, *ib.*
 - so may a trustee when possession actually in *cestui que trust*, *ib.*
 - what possession suffices, *ib.*
 - possession of finder, *ib.*
 - possession, *primâ facie* proof of title, *ib.*
 - defendant cannot in general set up *jus tertii*, *ib.*
 - remedy of reversioner for permanent injury, 215.
 - trespass *ab initio*, 216.

TRESPASS—*continued*.

- (2) *To Goods and Chattels (de asportatis bonis)*—*continued*.
 recaption, 216.
 action for trespass, 218.
 limitation, *ib.*

TRESPASSER, injury to, when actionable, 126.
 when not actionable, 127.

TROVER. *See* WRONGFUL CONVERSION.

TRUSTEE may maintain trespass or conversion for injuries to goods when actual possession in cestui que trust, 214.

UNFENCED HOLE, 8.

VIEW, interruption of, is no tort, 7.

VIS MAJOR excuses, what would otherwise be actionable, 12.

VOTE, wrongful refusal to record, is a tort, 7.

WALL,

- trespass to, by sticking nails into it, 159.
 party, 165.

WARRANT. *See* CONSTABLE.

WARRANTY, damages incurred through breach of, may be recovered, 26.

WASTE, 25.

WATER,

- causing accumulation of, whereby another's property is injured, is actionable, unless injury caused by vis major, 12
et seq.
 prescriptive right to discharge, on to another's land, 194.

WATERCOURSE,

- right to use of, vested in riparian proprietors, 190.
 disturbance of right to use of, *ib.*
 penning back-water in, *ib.*
 prescriptive rights in derogation of other riparian proprietors, *ib.*
 rights may be gained in an artificial, *ib.*

WAY,

- private, nuisance on, 131.
 right of, 194.
 right of, of necessity, *ib.*
 cesser of right when necessity ceases, 195.
 when granted right ceases with the object, *ib.*

WIFE may sue for loss caused by the killing of her husband, 144.
See ADULTERY.

WINDMILL near a public highway is a public nuisance, 126.

WINDOWS. *See LIGHT AND AIR.*

WORDS. *See DEFAMATION.*

WRONGDOER,
 any possession sufficient to sustain trespass against a, 214.
 all things are presumed against a, 68.

WRONGFUL CONVERSION,
 what is, 209.
 destruction of goods by bailee is, 210.
 purchase of goods from a person not entitled is a, even by a
 bonâ fide purchaser, 211.
 possession necessary to maintenance of action for, 213.
 reversioner cannot sue for, *ib.*
 reversioner's remedy, 215.
 possession follows title, 213.
 unauthorized delivery by bailee reverts possession in bailor, *ib.*
 sale of goods by bailee's assignee reverts possession in bailor,
 ib.
 sale by one having a lien is a conversion, *ib.*
 damages for sale by person having a lien, 214.
 any possession suffices against a wrongdoer, *ib.*
 possession of finder, 214.
 possession primâ facie evidence of title, *ib.*
 when defendant may set up jus tertii, *ib.*
 conversions of joint owners, 216.
 subsequent conversion of lawfully obtained chattel, 210.
 making inquiries as to real owner before delivering goods
 to him is no conversion, 217.
 recaption, *ib.*
 ordinary remedy by action, 218.
 power of judge to order restitution, *ib.*
 replevin, *ib.*
 waiver of tort, 219.
 limitation, 221.
 restitution of stolen goods, 220.

WRONGS,
 division of, 3.
 definition of public and private, *ib.*

CATALOGUE
OF
Law Works

PUBLISHED BY

MESSRS. BUTTERWORTH,

Law Booksellers and Publishers



TO THE QUEEN'S MOST EXCELLENT MAJESTY,

AND TO

H.R.H. THE PRINCE OF WALES.

*"Now for the Laws of England, if I shall speak my opinion of them without
"partiality either to my profession or country, for the matter and nature of
"them, I hold them wise, just and moderate laws; they give to God, they give to
"Cæsar, they give to the subject what appertaineth. It is true they are as mixt
"as our language, compounded of British, Saxon, Danish, Norman customs.
"And surely as our language is thereby so much the richer, so our laws are like-
"wise by that mixture the more complete."—LORD BACON.*

LONDON:
7, FLEET STREET, E.C.
1879.

INDEX TO CATALOGUE.

	Page		Page		Page
Accounts,		Blockade.	Deane ... 61	Consolidation Acts.	
<i>Law of.</i> Pulling ...	59	Bookkeeping,		Shelford ...	18
Actions at Law.		<i>Solicitors'.</i> Coombs ...	45	Conspiracy,	
Browne ...	61	Boundaries.	Hunt... 46	<i>Law of.</i> Wright ...	58
Kerr ...	62	Brokers.	Keyser ... 60	Constitution.	
Williams ...	61	Burgesses Manual.		May ...	26
Administration Bonds.		Gaches ...	62	Stephen ...	5
Chadwick ...	10	Carriers,		Constitutional History.	
Admiralty,		<i>Inland.</i> Powell ...	36	Fulton ...	27
<i>Practice.</i> Coote ...	31	<i>Railway.</i> Shelford ...	18	Contraband of War.	
Advowsons.		Chamber Practice.		Moseley ...	43
Mirehouse ...	60	<i>Com.Law.</i> Parkinson ...	62	Deane ...	61
Agricultural Holdings.		Chancery Practice.		Contracts.	
Bund... ..	16	Goldsmith ...	29	Plumptre ...	37
Aliens.	Cutler ... 31	Hunter ...	62	Contributories.	Collier 48
Appeals, House of Lords		<i>Chancery Claims.</i>		Conveyancing,	
Denison & Scott ...	7	Drewry ...	10	<i>Introduction.</i> Lewis ...	21
Arbitrations.	Redman 33	<i>Drafting.</i> Lewis ...	21	<i>Practice.</i> Ball ...	56
Articled Clerk.		Charitable Trusts.		Barry ...	38
Mosely ...	29	Tudor ...	40	Smith ...	37
Attachment,		Church Building.		Tudor ...	28, 64
<i>Foreign,</i> Brandon ...	43	Trower ...	47	<i>Forms.</i> Barry ...	38
Average.	Crump ... 8	<i>Pews.</i> Heales ...	44	Crabb ...	30
Awards.	Redman ... 33	Church and State.		Christie ...	30
Banking.	Grant ... 19	Hale ...	63	Kelly ...	33
Keyser ...	60	Civil Law.		Shelford ...	30
Bankruptcy.		Tomkins & Jencken ...	22	Rouse ...	34
<i>Manual.</i>		Claims and Defences,		Convictions,	
Bulley & Bund ...	48	<i>Forms of.</i> Drewry... ..	10	<i>Synopsis of.</i> Oke ...	49
<i>In County Courts.</i>		Collieries.		Saunders ...	64
Davis ...	13	Bainbridge ...	25	<i>Forms.</i> Oke ...	50
<i>Index.</i> Linklater ...	61	Colonial Law.		Co-operation.	
Bar.		Barbados ...	60	Brabrook ...	44
Examination Journal ...	56	Commentaries.		Copyholds,	
Smith ...	43	Stephen's Blackstone's 5		<i>Enfranchisement.</i>	
Pearce ...	60	Phillimore's ...	24, 64	Rouse ...	44
Barbados.	Laws of ... 60	Common Form Practice.		<i>Law of.</i> Scriven ...	40
Belligerents.		Coote ...	17	Coroner.	Baker ... 60
Hamel ...	60	Common Law,		Corporations in General.	
Bengal Code,		<i>Law & Equity.</i> Chute ...	14	Grant ...	46
<i>Regulations of the.</i>		<i>Practice.</i> Dixon ...	59	Costs, <i>Law of.</i> Gray ...	59
Field ...	43	Lush ...	59	County Courts,	
Bills of Exchange.		Kerr ...	62	<i>Practice.</i> Davis ...	12
Grant ...	19	Companies.	Grant ... 46	<i>Practice in Equity, Bank-</i>	
Bills of Sale.	Hunt 15	Shelford ...	9	<i>ruptcy, &c.</i> Davis ...	13
Blackstone.		Compensation,		<i>Practice in Admiralty.</i>	
Stephen's ...	5	<i>Law of.</i> Ingram ...	40	Coote ...	31
		Shelford ...	18		

	Page		Page		Page
Criminal Law.	Davis 41	Examinations.		International Law.	
	Oke 49	Bar Examination	56	Deane	64
Curates.	Field 60	Journal	56	Hamel	60
Customs Laws.		Law Examination	54	Phillimore	24, 64
Hamel	9	Journal	54	Intoxicating Liquors	
Deeds.	Tudor 28	Mosely's Articles	29	Act.	Oke 54
Descents.	Fearne 62	Clerks' Handy Book	29	Joint Stock Companies.	
Dictionary, Law.		Fences.	Hunt 46	Collier	48
Mozley & Whiteley	44	Final Examination		Shelford	9
Divorce.	Practice.	Guide.	Bedford 22	<i>A. counts.</i>	Polking 59
Browning	57	Fisheries.	Bund 47	Judicature.	
Domestic Servants.		Oke	53	Baxter	57
Baylis	41	Foreshores.	Hunt 46	Bedford	22
Draftsman (The).		Williams & Nicholson	60	Dewry	10
Kelly	33	Forms.		Trower	14
Drainage.	Wilson 62	<i>Conveyancing.</i>	Barry 38	Jurisprudence.	
Woolrych	28	Crabb	30	<i>On Form of the Law.</i>	
Ecclesiastical.		Rouse	34	Holland	58
Practice.	Coote 63	<i>Magisterial.</i>	Oke 50	Webb	37
Judgment.	Bayford 63	<i>Pleading.</i>	Chitty 58	Justice of Peace.	Oke 49
Burder v. Heath	63	Greening	61	Labour Laws.	Davis 7
Gorham Case	63	<i>Probate.</i>	Chadwick 10	Land Settlements.	
Long v. Cape Town	63	Frauds.	Hunt 15	Bund	62
Martin v. Macko-		Game Laws.	Oke 52	Landlord and Tenant.	
nochie	63	Gas Companies Acts.		Fawcett	16
Phillimore	63	Michael & Will	36	Lands Clauses Acts.	
Helbert v. Purchas	63	Guarantees.	De Colyar 13	Ingram	40
England.	<i>Laws of.</i>	Highways.	Glen 64	Shelford	9
Blackstone	5	House of Lords.		Law Dictionary	11
Francillon	61	<i>Appeals.</i>		Law Student's Mag.	54
Stephen	5	Denison & Scott	7	Law Studies.	Mosely 29
English Bar.	Pearce 60	<i>Digest.</i>	Clark 27	Smith	43
	Smith 43	<i>Practice.</i>	May 26	Leading Cases.	
Equity.		Income Tax Laws.		<i>Real Property.</i>	Tudor 28
Claims.	Dewry 10	Dowell	39	Leases.	Crabb 30
County Courts.	Davis 13	Indian Penal Code.		Rouse	34
Doctrine and Practice.		<i>Analysis.</i>	Cutler & Griffin 29	Legacy Duties.	
Goldsmith	29	Indian Statutes.	Index.	Shelford	41
Draftsman.	Lewis 21	Field	43	Libel.	Starkie 15
Equity & Law.	Chute 14	Industrial Societies.		Licensing Laws.	Oke 51
Judicature.	Trower 14	Brubrook	44	Life Assurance.	
Pleader.	Dewry 42	Institutes of English		Blayney	60
Principles.	Roberts 13	Public Law.	Nasmith 26	Lights Window.	
Suit in.	Hunter 62	Private Law.		Latham	33
Evidence.		Nasmith	26	Local Government.	
County Court.	Davis 12			Glen	61
Law of.	Powell 6			Locus Standi.	
Wills.	Wigram 45			Clifford & Rickards	32
Circumstantial.	Wills 43			Lunacy.	Philips 57
				Magisterial Law.	Oke 49
				<i>Forms.</i>	Oke 59
				Saunders	64

	Page		Page		Page
Marine Insurance.		Precedents,		Servants.	Baylis ... 41
Crump	8	<i>Conveyancing</i> , Barry	38	Sewers.	Woolrych ... 28
Maritime Warfare.		Crabb	30	Sheriff's Court.	Davis 12
Deane	61	Rouse	34	Short Hand.	Gurney 61
Hamel	60	<i>Pleading</i> , Chitty, jun.	58	Slander.	Starkie ... 15
Masters and Servants.		Preliminary Exami-		Stamp Laws.	Dowell 19
Baylis	41	nation Journal ...	56	Statutes, Table of Lead-	
Davis... ..	7	Principal and Surety.		ing.	Bedford ... 22
Masters and Workmen.		De Colyar	13	Stock Exchange.	
Lovesy	58	Private Bills.		Keyser	60
Mayor's Court Practice.		Clifford & Stephens	32	Succession Dnty.	
Brandon	43	May	26	Shelford	41
Memoirs of—		Private Law. Nasmith	26	Suit in Equity.	Hunter 62
Lyndhurst	60	Prize Law. Lushington	44	Summary Convictions.	
Talfourd	60	Probate,		Oke	49
Mines and Minerals.		<i>Practice</i> , Coote ...	17	Saunders	64
Bainbridge	25	Dr. Tristram ...	64	Tariffs and Treaties.	
Mortgages.	Fisher... 20	<i>Forms</i> , Chadwick... 10		Hamel	9
	Rouse... 34	<i>Duties</i> , Shelford ... 41		Hertslet	38
Municipal Law.		Provident Societies.		Tenancies, Agricul-	
Gaches	62	Brabrook	44	tural.	Bund ... 16
Grant	46	Public Law. Nasmith	26	Torts.	Underhill ... 23
Municipal Registra-		Railways.	Shelford 18	Trade Marks.	Adams 25
tion.	Davis ... 37	<i>Compensation</i> ,		Treaties.	Hertslet ... 38
Naturalization.	Cntler 31	Ingram	40	Trusts.	Underhill ... 23
Negligence.	Saunders 35	Real Property.		<i>Charitable</i> , Tudor ... 40	
Parliamentary.		Tudor	28	Turnpike Laws.	Oke 53
Clifford & Stephens	32	<i>Chart</i> , Fearne ...	62	Vendors & Purchasers.	
May	26	Seaborne	42	Seaborne	42
Partition, Law of.		Referees' Court.		Water Companies Acts.	
Lawrence	46	Clifford & Stephens	32	Michael & Will ...	36
Partnership.	Dixon 35	Registration.	Davis 37	Wills.	Coote
Tudor's Pothier ...	61	Religious,	<i>Doctrine</i> ,	Crabb	30
Patent Cases.	Higgins 39	Burder v. Heath... 63		Tudor... ..	28
Patents.	Norman ... 61	<i>Discipline</i> ,		Wigram	45
Petty Sessions.	Oke 49	Long v. Cape Town 63		Winding-up.	Collier 48
Saunders	64	Reporting Cases.		Shelford	18
Pews.	Heales ... 44	Cutler	57	Window Lights.	
Pleading,		Ritual.	Bayford ... 63	Latham	33
<i>Common Law</i> , Chitty	58	Hamel	63	Wrongs.	Underhill... 23
Greening	61	Roman Law.	Gaius 42		
Williams	61	Ortolan's	32		
<i>Equity</i> , Drewry ...	42	Tomkins	42		
Lewis	24	Tomkins & Jeneken	22		
Poor Law,		Salmon Fisheries.			
<i>Orders</i> , Glen ...	61	Bund	47		
		Oke	53		
		Savings Banks.			
		Forbes	41		

Law works published by Messrs. Butterworth.

STEPHEN'S NEW COMMENTARIES. 7th Edit.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, partly founded on Blackstone. The Seventh Edition, by JAMES STEPHEN, Esq., LL.D., Judge of County Courts, late Professor of English Law at King's College, London, and formerly Recorder of Poole. 4 vols. 8vo. 4l. 4s. cloth.

. This work is set for the Intermediate Examination for Solicitors for 1880.

From the "Law Journal."

"It is unnecessary for us on this occasion to repeat the eulogy which six years ago we bestowed, in 1868, not without just reason, on the Commentaries as they then appeared. It has been remarked that Stephen's Commentaries enjoy the special merit of being an educational work, not merely a legal text book. Their scope is so wide that every man, no matter what his position, profession, trade or employment, can scarcely fail to find in them matter of special interest to himself, besides the vast fund of general information upon which every Englishman of intelligence may draw with advantage."

From the "Solicitors' Journal."

"A work which has reached a Seventh Edition needs no other testimony to its usefulness. And when a law book of the size and costliness of these 'Commentaries' passes through many editions, it must be taken as established that it supplies a need felt in all branches of the profession, and probably to some extent, also, outside the profession. It is difficult indeed to name a law book of more general utility than the one before us. It is, as regards the greater part, not too technical for the lay reader, and not too full of detail for the law student, while it is an accurate and—considering its design—a singularly complete guide to the practitioner. This result is due in no small degree to the mode in which the successive editions have been revised, the alterations in the law being concisely embodied, and carefully interwoven with the previous material, forming a refreshing contrast to the lamentable spectacle presented by certain works into which successive learned editors have pitchforked headnotes of cases thereby rendering each edition more unconnected and confusing than its predecessor. As the result of our examination we may say that the new law has, in general, been accurately and tersely stated, and its relation to the old law carefully pointed out."

From the "Law Times."

"We have in this Work an old and valued friend. For years we have had the last, the Sixth Edition, upon our shelves, and we can state as a fact that when our text books on particular branches of the Law have failed us, we have always found that Stephen's Commentaries have supplied us with the key to what we sought, if not the actual thing we required. We think that these Commentaries establish one important proposition, that to be of thorough practical utility a treatise on English Law cannot be reduced within a small compass. The subject is one which must be dealt with comprehensively, and an abridgment, except merely for the purposes of elementary study, is a decided blunder. Of the scope of the Commentaries we need say nothing. To all who profess acquaintance with the English Law their plan and execution must be thoroughly familiar. The learned Author has made one conspicuous alteration, combining 'Civil Injuries' within the compass of one volume, and commencing the last volume with 'Crimes,' and in that volume he has placed a Table of Statutes. In every respect the Work is improved, and the present writer can say, from practical experience, that for the Student and the Practitioner there is no better Work published than 'Stephen's Commentaries.'"

From the "Law Examination Journal."

"This most valuable work has now reached its Seventh Edition. Those who desire to take a survey of the entire field of English Law cannot do better than procure this work. For a general survey of the entire field of English Law, or, at least, for a comparative survey of different branches of Law, Stephen's Commentaries are unrivalled, and we may observe that these Commentaries should not be used merely as a book of reference, they should be carefully studied."

POWELL ON EVIDENCE. By CUTLER & GRIFFIN.
—Fourth Edition.

POWELL'S PRINCIPLES and PRACTICE of the **LAW of EVIDENCE.** Fourth Edition. By J. CUTLER, B.A., Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London, and E. F. GRIFFIN, B.A., Barristers-at-Law. Post 8vo. 18s. cloth; 22s. calf.

* * * *This edition contains the alterations necessary to adapt it to the practice under the Judicature Acts, as well as other material additions. The Bankers' Book Evidence Act, 1876, is given as an Addenda to the Appendix of Statutes.*

"The editors of this work put forward 'no claim to that exhaustiveness which other works dealing with the law of evidence aim at.' Their desire, on the contrary, is to 'adhere to the principle' of their author 'of not overloading the book with cases.' We heartily approve the principle; which, however, is somewhat difficult of application. We must add, however, that in most instances the cases are tersely abstracted, and the convenience of the reader is consulted by references to more than one set of reports. The plan of the book is to give pretty frequently, and, as far as we can discover, in almost every chapter, a 'rule' of general application, and then to group the cases round it. These rules or axioms are printed in a distinctive type. The work has been pruned and remodelled by the light of the Judicature Acts. The authors give in an appendix the Indian Evidence Acts, with some Indian decisions thereupon, and occasionally notice these acts in the text. On the whole we think this a good edition of a good book. It brings down the cases to the latest date, and is constructed upon a model which we should like to see more generally adopted."—*Solicitors' Journal*.

"The plan adopted is, we think, an admirable one for a concise handy-book on the subject. Such maxims as that 'hearsay is inadmissible,' are given at the head of the chapter in large type, and then follow the explanations. The Indian code of evidence given at the end of the book deserves to be read by every student, whether going to India or not. The few rules of the English law of evidence, which are purely statutory, are also given verbatim, including the two orders of the Judicature Act, 1875, which appear to be correctly appreciated. The present form of Powell on Evidence is a handy, well printed and carefully prepared edition of a book of deserved reputation and authority."—*Law Journal*.

"We have received the fourth edition of 'Powell's Principles and Practice of

the Law of Evidence,' by Cutler and Griffin. We are informed in the preface that the results of the Judicature Acts as regards evidence have been duly noted, whilst the work itself has been rendered more comprehensive. It is an excellent summary of principles."—*Law Times*.

"There is hardly any branch of the law of greater interest and importance, not only to the profession, but to the public at large, than the law of evidence. On this branch of the law, moreover, all well as on many others, important changes have been effected of recent years. We are, therefore, all the more inclined to welcome the appearance of the Fourth Edition of this valuable work."—*Law Examination Journal*.

"In Powell's Law of Evidence, of which a fourth edition by Messrs. Cutler and Griffin has now been published, the Indian Evidence Act and the rules of evidence adopted in the Anglo-Indian courts occupy a prominent place, and while this must form a special recommendation of the work to students intending to go to India, it is a feature which others besides will find reason to appreciate. To the general practitioner, however, the main value of the work must consist in its treatment of the law prevailing in this country and in England, and in this respect we confidently recommend the work to our readers. The principles and practice of the law of evidence in equity are also more fully treated than in any modern work on evidence with which we are acquainted, and the provisions of the Judicature Act, as well as the new English rules, have been incorporated with this edition, besides many important statutes passed since the date (1868) of the preceding edition. To the student we know no work on the law of evidence we could more strongly recommend, and both branches of the profession will find Powell's Law of Evidence a work which can be consulted with confidence."—*Irish Law Times*.

DENISON AND SCOTT'S HOUSE OF LORDS APPEAL PRACTICE.

APPEALS TO THE HOUSE OF LORDS: Procedure and Practice relative to English, Scotch and Irish Appeals; with the Appellate Jurisdiction Act, 1876; the Standing Orders of the House; Directions to Agents; Forms, and Tables of Costs. Edited, with Notes, References and a full Index, forming a complete Book of Practice under the New Appellate System. By CHARLES MARSH DENISON and CHARLES HENDERSON SCOTT, of the Middle Temple, Esqs., Barristers-at-Law. Svo. 16s. cloth.

"The most important portion of the work, viz., that concerning the Procedure and Practice on Appeal to the House of Lords, contains information of the most important kind to those gentlemen who have business of this nature; it is well and ably compiled, and the practitioner will find no difficulty in following the various steps indicated.

"The whole book is well and carefully prepared, and is unusually readable in its style."—*Justice of the Peace*.

"This is a small volume upon a subject of the greatest practical interest at the present time, for, notwithstanding the changes which have been made in

the construction of the ultimate Court of Appeal, there are no two opinions as to the position which it holds in the confidence of the profession and the public. A learned introduction gives a brief but sufficient historical sketch of the jurisdiction of the House of Lords. This is followed by a practical treatise, which is a complete and well-written guide to the procedure by which an Appeal is begun, continued, and ended, including an important chapter on Costs. In an Appendix are given the Act of 1876, the portions of the Supreme Court of Judicature (Ireland) Act, 1877, and the Scotch Statutes, Forms, and Bills of Costs."—*Law Times*.

DAVIS'S LABOUR LAWS OF 1875.

THE LABOUR LAWS OF 1875, with Introduction and Notes. By J. E. DAVIS, Esq., Barrister-at-Law, and late Police Magistrate for Sheffield. Svo. 12s. cloth.

"We advise the practitioner to arm himself with what will probably be the standard work on the subject. He will find the arrangement good, and the explanation of the procedure exceptionally lucid."—*Law Magazine*.

"This is a class of book which is very much wanted, and should receive every encouragement. Mr. Davis says that his object has been to combine a popular comment with a strictly practical treatise. In this he has succeeded. The book is in every respect careful and thoughtful, it gives the best reading of the law which we have, and furnishes in *extenso* all the Acts of Parliament relating to

the subject."—*Law Times*.

"Mr. Davis's book is not a reprint of the acts with a few notes, but an original and complete treatise, and it will be appreciated by those who are concerned in the working of the labour laws."—*Law Journal*.

"A good book on this subject should fulfil two distinct functions by no means easy to combine. Mr. Davis has, in our opinion, successfully fulfilled both these requisites, and may be congratulated upon having produced a book which will probably become the standard work on this important subject."—*Solicitors' Journal*.

CRUMP'S PRINCIPLES OF MARINE INSURANCE.

THE PRINCIPLES OF THE LAW RELATING TO MARINE INSURANCE AND GENERAL AVERAGE in England and America, with occasional references to French and German Law. By F. OCTAVIUS CRUMP, of the Middle Temple, Esq., Barrister-at-Law. In 1 vol. royal 8vo. 21s. cloth; 26s. calf.

"This is decidedly a clever book. We always welcome cordially any genuine effort to strike out a new line of legal exposition, not merely because such effort may more effectually teach law, but because it may exhibit a better method than we now possess of expressing law. We have been at pains to search the book for many of the most recent cases in marine insurance, and although some of them are exactly of a character to puzzle and embarrass a codifier, Mr. Crump has dealt successfully with them. We think we may fairly congratulate the author upon the production of a work original in design, excellent in arrangement, and as complete as could fairly be expected."—*Law Journal*.

"The principles and practice of general average are included in this admirable summary."—*Standard*.

"Mr. Crump, we may observe, in this treatise of the law of average and insurance, has supplied a ready armoury of reference."—*Shipping and Mercantile Gazette*.

"Alphabetically arranged this work contains a number of the guiding principles in the judge-made law on this subject, which has got into such a tangle of precedents that a much less careful digest than that under the above title would have been welcome to students as well as merchants. Mr. Crump has made a very commendable effort at brevity and clearness."—*Economist*.

"There are many portions of it well arranged, and where the law is carefully and accurately stated."—*Law Magazine*.

"We rejoice at the publication of the book at the head of this notice. Mr. Crump is a bold man, for he has positively made an innovation. Instead of a ponderous tome, replete with obsolete law, useless authorities, and antiquated quotations, we have a handy, clearly written, and well printed book, seemingly containing the whole law on the subject, in the shape of a digest of decided cases in the very words of the judges, and leaving nothing doubtful and misleading to beguile the reader. It is true that such a plan increases the trouble of the author, but it diminishes that of the reader he may pardon the irregularity. Seriously speaking, Mr. Crump's book seems very perfect and is certainly very clear in its arrangement

and complete in its details, conscientiously going into the most minute points, and omitting nothing of importance."—*Irish Law Times*.

"It is at once a treatise and a dictionary on the difficult and complicated branch of the law with which it deals, and to which Mr. Crump has in this volume done something to give an orderly simplicity."—*Daily News*.

"Considering the narrow compass within which it is comprised, we have been surprised to find how complete and comprehensive it appears to be, and if further experience should justify the expectations which our perusal of it induces us to form, Mr. Crump will not be disappointed in his hope that he has made a step in advance towards simplification—not to use the term codification—of the law." . . . "The work, which must have involved great labour, appears to us to have been executed with fulness, accuracy and fidelity, and its value is much increased by references, not only to English and American decisions and text writers, but to the French and German law on the same subject."—*Solicitors' Journal*.

"The plan of the book differs materially, and, we think, advantageously, from the ordinary text book. By this system several advantages are secured. We have examined several of Mr. Crump's propositions in order to test him on these points, and the result is decidedly in his favour. We have no hesitation in commending the plan of Mr. Crump's book. Its use in actual practice must of course be the ultimate gauge of its accuracy and completeness, but from the tests that we have applied we have little doubt that it will stand the ordeal satisfactorily."—*Athenæum*.

"The volume by Mr. Octavius Crump on the Principles of the Law of Marine Insurance and General Average attempts what, we believe, has never before been attempted in legal literature—namely, under an alphabetical classification of subjects, to state principles without argument in such a manner as to dispense with the necessity for an index. The experiment is one which, if successful, seems to point the way to codification. This mode of treatment makes it easy for any one to follow the law from the beginning to the end of a marine risk."—*Times*.

HAMEL'S CUSTOMS LAWS.

THE LAWS OF THE CUSTOMS, 1876, consolidated by direction of the Lords Commissioners of her Majesty's Treasury. With practical Notes and References throughout; an Appendix containing various Statutory Provisions incidental to the Customs; the Customs Tariff Act, 1876, and a Copious Index. By FELIX JOHN HAMEL, Esq., Solicitor for her Majesty's Customs. Post 8vo. 6s. cloth; demy 8vo. 8s. 6d.

"Mr. Hamel, solicitor for her Majesty's customs, has produced a very useful 'pocket volume' edition of the Customs Laws and Tariff Act, 1876, for which his official position affords him

unique facilities, and which ought to be in the hands of all who have an interest in our maritime commerce."—*Law Magazine*.

◆

SHELFORD'S JOINT STOCK COMPANIES.—
Second Edition by PITCAIRN and LATHAM.

SHELFORD'S LAW OF JOINT STOCK COMPANIES, containing a Digest of the Case Law on that subject; the Companies Acts, 1862, 1867, and other Acts relating to Joint Stock Companies; the Orders made under those Acts to regulate Proceedings in the Court of Chancery and County Courts; and Notes of all Cases interpreting the above Acts and Orders. Second Edition, much enlarged, and bringing the Statutes and Cases down to the date of publication. By DAVID PITCAIRN, M.A., Fellow of Magdalen College, Oxford, and of Lincoln's Inn, Barrister-at-Law, and FRANCIS LAW LATHAM, B.A., Oxon, of the Inner Temple, Barrister-at-Law, Author of "A Treatise on the Law of Window Lights." 8vo. 21s. cloth.

"We may at once state that, in our opinion, the merits of the work are very great, and we confidently expect that it will be, at least for the present, the standard manual of joint stock company law. That great learning and research have been expended by Mr. Pitcairn no one can doubt who reads only a few pages of the book; the result of each case which has any bearing upon the subject under discussion is very lucidly and accurately stated. We heartily congratulate him on the appearance of this work, for which we anticipate a great success. There is hardly any portion of the law at the present day so important as that which relates to joint stock companies, and that this work will be the standard authority on the subject we have not the shadow of a doubt."—*Law Journal*.

"After a careful examination of this work we are bound to say that we know of no other which surpasses it in two all-important attributes of a law book; first, a clear conception on the part of the author of what he intends to do and how he intends to treat his subject; and secondly, a consistent, laborious

and intelligent adherence to his proposed order and method. All decisions are noted and epitomised in their proper places, the practice-decisions in the notes to Acts and Rules, and the remainder in the introductory account or digest. In the digest Mr. Pitcairn goes into everything with original research, and nothing seems to escape him. It is enough for us that Mr. Pitcairn's performance is able and exhaustive. Nothing is omitted, and everything is noted at the proper place. In conclusion, we have great pleasure in recommending this edition to the practitioner. Whoever possesses it, and keeps it noted up, will be armed on all parts and points of the law of joint stock companies."—*Solicitors' Journal*.

"Although nominally a second edition of Mr. Shelford's treatise it is in reality an original work; the form and arrangement adopted by Mr. Shelford have been changed, and, we think, improved, by Mr. Pitcairn. A full and accurate index also adds to the value of the work, the merits of which we can have no doubt will be fully recognized by the profession."—*Law Magazine*.

DREWRY'S FORMS OF CLAIMS AND DEFENCES.

FORMS OF CLAIMS AND DEFENCES IN CASES intended for the **CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE.** With Notes, containing an Outline of the Law relating to each of the subjects treated of, and an Appendix of Forms of Endorsement on the Writ of Summons. By C. STEWART DREWRY, of the Inner Temple, Esq., Barrister-at-Law, Author of a Treatise on Injunctions, and of Reports of Cases in Equity, temp. Kindersley, V.-C., and other works. Post 8vo. 9s. cloth.

"Mr. Drewry has attempted to supply the defect of the schedule to the Judicature Act of 1875, and he has proceeded in his work in the safest and most satisfactory manner. He has not put forward a number of imaginary forms of pleadings, but he has collected from the reports pleadings in decided cases, and has moulded these into precedents for similar actions under the Judicature Act. The forms thus introduced are concise, and cannot fail to be very useful and welcome."—*Law Magazine*.

"Mr. Drewry's plan of taking the facts for the forms from reported cases and adapting them to the new rules of pleading, seems the best that can be

adopted. The forms we have looked at seem to be fairly correct."—*Solicitors' Journal*.

"The equity draftsmen of the present day, who, however experienced in the niceties of the past system, cannot but need the aid of a work thus compiled, and, trusting to its guidance, benefit in time and labour saved; while to the younger members of the profession especially we cordially recommend the work."—*Irish Law Times*.

"On the whole we can thoroughly recommend it to our readers."—*Law Examination Journal*.

"The work is likely to prove useful to the practitioner."—*Justice of the Peace*.

CHADWICK'S PROBATE COURT MANUAL.

Corrected to 1876.

EXAMPLES of ADMINISTRATION BONDS for the **COURT of PROBATE;** exhibiting the principle of various Grants of Administration, and the correct mode of preparing the Bonds in respect thereof; also Directions for preparing the Oaths; arranged for practical utility. With Extracts from Statutes; also various Forms of Affirmation prescribed by Acts of Parliament, and a Supplemental Notice, bringing the work down to 1876. By SAMUEL CHADWICK, of her Majesty's Court of Probate. Roy. 8vo. 12s. cloth.

"We undertake to say that the possession of this volume by practitioners will prevent many a hitch and awkward delay, provoking to the lawyer himself and difficult to be satisfactorily explained to the clients."—*Law Magazine and Review*.

"The work is principally designed to save the profession the necessity of obtaining at the registries information as to the preparing or filling up of bonds, and to prevent grants of administration and administration with the will

annexed being delayed on account of the defective filling up of such instruments."—*Solicitors' Journal*.

"Mr. Chadwick's volume will be a necessary part of the law library of the practitioner, for he has collected precedents that are in constant requirement. This is purely a book of practice, but therefore the more valuable. It tells the reader what to do, and that is the information most required after a lawyer begins to practise."—*Law Times*.

MOZLEY AND WHITELEY'S CONCISE LAW DICTIONARY.

A CONCISE LAW DICTIONARY, containing Short and Simple Definitions of the Terms used in the Law. By HERBERT NEWMAN MOZLEY, M.A., Fellow of King's College, Cambridge, and of Lincoln's Inn, Esq., and GEORGE CRISPE WHITELEY, M.A., Cantab, of the Middle Temple, Esq., Barristers-at-Law. In 1 vol. 8vo. 20s. cloth; 25s. brown calf.

"Messrs. Mozley and Whiteley, by the wording of their title page, seem to have set brevity before them as the special feature of their work, which is comprised within little more than five hundred pages. As a handy book for the desk, and as combining general accuracy with brevity, we have no doubt that Messrs. Mozley and Whiteley's Concise Law Dictionary will meet with a large amount of favour."—*Law Magazine*.

"This book is a great deal more modest in its views than the law dictionary we reviewed a little while ago. Its main object is to explain briefly legal terms, both ancient and modern. In many cases, however, the authors have added a concise statement of the law. But, as the work is intended both for lawyers and the public at large, it does not profess to give more than an outline of the doctrines referred to under the several headings. Having regard to this design, we think the work is well and carefully edited. It is exceedingly complete, not only giving terse explanations of legal phrases, but also notices of leading cases and short biographies of legal luminaries. We may add that a very convenient table of reports is given, showing the abbreviations, the date and the court, and that the book is very well printed."—*Solicitors' Journal*.

"This book contains a large mass of information more or less useful. A considerable amount both of labour and learning has evidently been expended upon it, and to the general public it may be recommended as a reliable and useful guide. Law students desirous of cramming will also find it acceptable."—*Law Times*.

"Mr. Wharton's work, although it is brought down to a very recent period, is nevertheless so bulky and so costly that a more concise and cheaper publication might well find favour in the eyes of the public. The authors of the above work do not profess to address themselves solely to the members of the legal profession, their object has been to produce a book which shall also be useful to the general public by giving clear yet concise explanations of the legal terms and

phrases in past and present use, and we think they have satisfactorily performed their task."—*Justice of the Peace*.

"It should contain everything of value to be found in the other larger works, and it should be useful not merely to the legal profession, but also to the general public. Now, the work of Messrs. Mozley and Whiteley appears to fulfil those very conditions; and, while it assists the lawyer, will be no less useful to his client. On the whole, we repeat that the work is a praiseworthy performance which deserves a place in the libraries both of the legal profession and of the general public."—*Irish Law Times*.

"The 'Concise Law Dictionary,' by Mr. H. Mozley and Mr. G. Whiteley, is not only concise but compendious, and is well adapted for those who desire to refresh the memory or obtain a succinct explanation of legal terms without going through a mass of details."—*Saturday Review*.

"This work will supply a want felt by many, as well among law students as the general public, of an explanatory index of legal terms and phrases; complete to the present time, and at the same time moderate in bulk. To such, too, it may be recommended for its many concise supplementary expositions of the law bearing upon the subject-matter of many of the titles indexed."—*Nonconformist*.

"Though devoting less space to expositions of the law than Wharton and his editors allow, will yet be found useful for precise definitions of law terms. In many cases its greater brevity is an advantage, enabling the book to be consulted with more rapidity and promptitude."—*Daily News*.

"The compilers being scholars and gentlemen, have taken pains and made their book a valuable one, of which we can prophesy new and even improved editions."—*Publishers' Circular*.

"An extremely handy book of reference. On the whole succinctness, clearness and condensation of matter have been happily studied and effectually secured in the double columns of a small octavo volume."—*Bookseller*.

DAVIS'S COUNTY COURT RULES AND ACTS OF 1875 and 1876.

THE COUNTY COURT RULES, 1875 and 1876, with Forms and Scales of Costs and Fees; together with the County Courts Act, 1875, and other recent Statutes affecting the Jurisdiction of the County Courts. Forming a SUPPLEMENT to the Fifth Edition of the COUNTY COURT PRACTICE and EVIDENCE, but entirely complete in itself. By JAMES EDWARD DAVIS, of the Middle Temple, Esq., Barrister-at-Law. In 1 vol. 8vo. 16s. cloth.

"Such disadvantages as are inherent to a Supplement he has reduced to a minimum by numerous references and a full index to the whole work. Some notion can be gained of the extent of the new matter with which Mr. Davis had to deal from the fact that the volume before us contains, exclusively of the index, 326 pages of matter. The volume is in a neat and handy form and well adapted for general use."—*Law Journal*.

"We will merely content ourselves with pointing out that the additions and changes as regards County Court jurisdiction have been very great and important, and that this volume indicates them in a well-arranged and convenient form. Its issue has been wisely delayed, so as to include the Rules of 1876."—*Law Magazine*.

"We have here in good type and conveniently arranged all the new legislation, whether parliamentary or judicial,

relating to County Courts. The book opens with the act of last session, shortly annotated; then follow the portions of other acts passed last session which relate to County Courts; and, after these, the Consolidated Rules issued last year, and the new Rules which came in force on Monday last. A very full index is added, containing references, not only to the present volume, but also to the work to which it is intended as a supplement."—*Solicitors' Journal*.

"The number of statutes affecting County Courts passed in 1874-75 is certainly formidable, and required to be brought at once to the notice of practitioners. This Mr. Davis does in a form which has thoroughly recommended itself to the profession. The voluminous index will form an excellent guide to the legislation as well as to the rules and orders."—*Law Times*.

DAVIS'S COUNTY COURTS PRACTICE & EVIDENCE. —Fifth Edition.

THE PRACTICE AND EVIDENCE IN ACTIONS IN THE COUNTY COURTS. By JAMES EDWARD DAVIS, of the Middle Temple, Esq., Barrister-at-Law. Fifth Edition. 8vo. 38s. cloth; 43s. calf.

* * * This is the only work on the County Courts which gives Forms of Plaints and treats fully of the Law and Evidence in Actions and other Proceedings in these Courts.

"We believe Mr. Davis's is the best and newest work on County Court practice."—*Law Times*.

"Mr. Davis's works are all conspicuous for clearness and accuracy. The present edition will fully sustain the well-earned reputation of the work."—*Solicitors' Journal*.

"It is hardly necessary for us to sum up in favour of a book which is so popular that the several editions of it pass rapidly out of print. All we need say is, that the verdict of the purchasing public has our entire approbation."—*Law Journal*.

DAVIS' EQUITY AND BANKRUPTCY IN THE COUNTY COURTS.

THE JURISDICTION & PRACTICE of the COUNTY COURTS in Equity (including Friendly Societies), Admiralty, Probate of Wills, Administration, and in Bankruptcy. By J. E. DAVIS, of the Middle Temple, Esq., Barrister-at-Law. 1 vol. 8vo. 18s. cloth; 22s. calf.

. This work, although issued separately, forms a Supplementary, or Second, Volume to Davis's County Courts Practice and Evidence in Actions.

ROBERTS' PRINCIPLES OF EQUITY.—Third Edition.

THE PRINCIPLES OF EQUITY as administered in the SUPREME COURT OF JUDICATURE and other Courts of Equitable Jurisdiction. By THOMAS ARCHIBALD ROBERTS, of the Middle Temple, Esq., Barrister-at-Law. Third Edition. 8vo. 18s. cloth.

"The work is calculated to prove useful to the profession, but more especially to the student class of our readers, and we cordially recommend it to them."—*Law Journal*.

"The author tells us, in the preface to this edition, that he wrote the first edition for students, but that he has carefully revised the whole work, and enlarged it with short references to books and cases, so as to adapt it not only to the wants of students but also for the use of practitioners. The book is praiseworthy."—*Law Times*.

"The work, however, will be found to abound in useful summaries of the leading doctrines in equity, and the student and practitioner may safely rely on finding this work executed with great experience and knowledge of the

subject, which are indeed the only sure foundation for a work of this kind calculated to be useful."—*Justice of the Peace*.

"Practitioners would find in it much that they imperfectly know, and students would find much rudimentary learning. By studious compression the author has contrived to introduce into by no means a large book a surprising amount of matter."—*Solicitors' Journal*.

"This work, by a member of the Chancery bar, will meet a want which must have been felt by every student of equity since the passing of the Judicature Acts. Mr. Roberts's work is more extensive than Mr. Smith's, as well as more readable. The table of statutes is especially valuable."—*Law Examination Journal*, April, 1877.

DE COLYAR'S LAW OF GUARANTEES.

A TREATISE ON THE LAW OF GUARANTEES and of PRINCIPAL and SURETY. By HENRY A. DE COLYAR, of the Middle Temple, Barrister-at-Law. 8vo. 14s. cloth.

"Mr. Colyar's work contains internal evidence that he is quite at home with his subject. His book has the great merit of thoroughness. Hence its present value, and hence we venture to predict will be its enduring reputation."—*Law Times*.

"The whole work displays great care in its production; it is clear in its statements of the law, and the result of the many authorities collected is stated with an intelligent appreciation of the

subject in hand."—*Justice of the Peace*.

"The volume before us is a very clear and trustworthy statement of the present bearing and scope of the law on all such questions."—*Standard*.

"The arrangement of the work is good, the subject is treated fully yet concisely, and an excellent index is added. The book will, we think, be found of use to law students as well as legal practitioners."—*Athenæum*.

CHUTE'S EQUITY IN RELATION TO COMMON LAW.

EQUITY UNDER THE JUDICATURE ACT, or the Relation of Equity to Common Law. By CHALONER WILLIAM CHUTE, Barrister-at-Law; Fellow of Magdalen College, Oxford; Lecturer to the Incorporated Law Society. Post 8vo. 9s. cloth.

"Mr. Chute has a chance of prolonged existence. His book is not on the *Judicature Act*. His manner is evidently philosophical, and proves the capacity of the author for the position of a lecturer, while it is just the kind of teaching by which students are attracted to the light. Students may here congratulate themselves on the possibility of finding, within the limits of two hundred pages, many of the chief doctrines of Equity, set forth briefly, lucidly and completely."—*Law Journal*.

"All the more important branches of Equity are fully discussed by Mr. Chute; and we may add that his style presents a very agreeable contrast to the general style of law books. In conclusion, we would heartily recommend this most instructive and interesting work to the perusal of the student, regretting that the limits of our space confine us to so brief a notice of it."—*Law Examination Reporter*.

"Mr. Chute's Lectures on Equity attracted considerable attention when they were delivered before the Incorporated Law Society, and he has done wisely in making them the basis of the present volume, which can scarcely fail to become a standard work on the subject of which it treats."—*Morning Post*.

"The book is deserving of praise, both for clearness of exposition and for the interesting way in which modern cases are used to illustrate the doctrines expounded. As it stands it appears to us to be a useful guide to the leading principles of Equity Jurisprudence. The book is written in easy and familiar language, and is likely to prove more attractive to the student than many formal treatises."—*Solicitors' Journal*.

"To the student commencing to study under the new system, Mr. Chute's treatise may prove of service. He thinks clearly, writes very well. As a small and meritorious contribution to the history of jurisprudence it deserves to be welcomed."—*Law Times*.

"The work is conscientiously done, and will be useful to the student at the present moment."—*Echo*.

"Mr. Chute's book is founded upon lectures delivered by him to the students at the Law Institution. The object of it is to point out concisely the principles on which the doctrines of Equity depend, and to show the relation of equity to the common law, and the work is a useful one for the class of persons to whom the lectures were delivered."—*Athenaeum*.

TROWER'S PREVALENCE OF EQUITY.

A MANUAL OF THE PREVALENCE OF EQUITY, under Section 25 of the Judicature Act, 1873, amended by the Judicature Act, 1875. By CHARLES FRANCIS TROWER, Esq., M.A., of the Inner Temple, Barrister-at-Law, late Fellow of Exeter College, and Vinerian Law Scholar, Oxford, Author of "The Law of Debtor and Creditor," "The Law of the Building of Churches and Divisions of Parishes," &c. 8vo. 5s. cloth.

"We congratulate Mr. Trower on having produced a concise yet comprehensive treatise on the Prevalence of Equity under the 25th section of the Judicature Act, which cannot fail to prove of great service alike to the student and to practitioners of the common law branch of the profession, who, under the recent legislation, find themselves called upon, probably for the first time, to study and apply in practice the equitable principles which now 'prevail.'"—*Law Magazine*, February, 1877.

"The amount of information con-

tained in a compressed form within its pages is very considerable, and on the whole it appears to be accurate. The work has been carefully revised, and is well and clearly printed."—*Law Times*.

"The propositions are fairly worked out and substantiated by references. The author hopes that his pages may be useful to the common law branch of the profession, which now finds itself called upon to apply the principles of equity to practice. Mr. Trower's manual may save them some hunting in text books of equity."—*Law Journal*.

FOLKARD ON SLANDER & LIBEL.—Fourth Edition.

THE LAW OF SLANDER AND LIBEL (founded upon Starkie's Treatise), including the Pleading and Evidence, Civil and Criminal, adapted to the present Procedure; also **MALICIOUS PROSECUTIONS** and **CONTEMPTS OF COURT**. By H. C. FOLKARD, Barrister-at-Law. In 1 thick vol. roy. 8vo. 45s. cloth.

"The fourth edition of this well-known work on Slander and Libel, to which circumstances have prevented our recording an earlier notice in these pages, reflects great credit on the learned author by the evidence which it exhibits of laborious carefulness and discriminating judgment, together with their resultant lucidity, accuracy and comprehensiveness. There is a full table of cases, and the index appears to be copious and well executed."—*Law Magazine*, August, 1877.

"It is well that such a treatise should have been re-edited, and it is well that it should have been edited by so careful and painstaking a man as Mr. Folkard."—*Law Magazine*.

"The real merit of the author of such a work as this, must consist in careful collation and systematic arrangement of

decided cases. No one can say that Mr. Folkard has failed in the full discharge of this onerous duty, and we are sure that he will earn, as he will obtain, the gratitude of the profession."—*Law Journal*.

"We recommend Mr. Folkard's work to the attention of the profession and the public. It is, as now edited, very valuable."—*Law Times*.

"It would be difficult to find any part of his subject which Mr. Folkard has not fully investigated, and the result is a valuable addition to the lawyer's library, which for many years has been much needed."—*Justice of the Peace*.

"It has been most laboriously executed. The profession may, we think, be pretty confident that whatever has been decided upon the Law of Libel will be found here."—*Solicitors' Journal*.

HUNT'S LAW OF FRAUDS AND BILLS OF SALE.

THE LAW relating to **FRAUDULENT CONVEYANCES** under the Statutes of Elizabeth and the Bankrupt Acts; with Remarks on the Law relating to Bills of Sale. By ARTHUR JOSEPH HUNT, of the Inner Temple, Esq., Barrister-at-Law, Author of "A Treatise on the Law relating to Boundaries, Fences and Foreshores." Post 8vo. 9s. cloth.

"Mr. Hunt has brought to bear upon the subject a clearness of statement, an orderliness of arrangement and a subtlety of logical acuteness which carry him far towards a complete systematization of all the cases. Neither has his industry been lacking; the cases that have arisen under 'The Bankruptcy Act, 1869,' and under the Bills of Sale Act, have been carefully and completely noted up and disposed by him in their appropriate places. The index also is both accurate and careful, and secures much facility of reference to the various matters which are the subjects of the work."—*Law Magazine*.

"Though smaller in size, Mr. Hunt's book deals with fraudulent conveyances under the Bankruptcy Acts, a subject which Mr. May in his work left almost untouched, although his book has the undoubted merit of being the first to break fresh ground in treating fraudulent conveyances in a separate volume.

In reviewing that book last year we took occasion, while praising the industry and care with which it was compiled, to remark on the obscurity of its style. In this respect its younger rival has considerable advantage. Mr. Hunt's book is as readable as a treatise on so technical a subject can well be made. Mr. Hunt's arrangement of his materials follows an orderly and intelligible plan. The index is apparently carefully prepared, and the table of cases shows that none of the recent cases have been overlooked. Mr. Hunt has produced a really useful book unnumbered by useless matter, which deserves great success as a manual of the law of fraudulent dispositions of property."—*Law Journal*.

"The author has collected with industry and care the authorities bearing on the questions he has undertaken to deal with. The matter is conveniently broken up, and the reader is assisted by a good index."—*Solicitors' Journal*.

BUND'S AGRICULTURAL HOLDINGS ACT, 1875.

The **LAW of COMPENSATION for UNEXHAUSTED AGRICULTURAL IMPROVEMENTS**, as amended by the Agricultural Holdings (England) Act, 1875. By **J. W. WILLIS BUND, M.A.**, of Lincoln's Inn, Barrister-at-Law, Author of "The Law relating to Salmon Fisheries in England and Wales," &c. 12mo. 5s. cloth.

"We think this design has been well accomplished. The provisions of the new law are, on the whole, accurately stated and so clearly explained that the unprofessional reader will find it easy to understand their meaning and effect. In the Appendix he provides a series of useful forms."—*Solicitors' Journal*.

"The chapter on the application of the act (Chap. 7) is clearly and concisely written, and the summary at the end of the chapter, setting out the most important points to be attended to by both landlords and tenants, will be found very useful. The book is a good supplement to any treatise on the law of landlord and tenant. The index is exhaustive, and the collection of forms supplies all that can be required."—*Law Magazine*.

"It will be found very serviceable to all those who have to administer the Agricultural Holdings Act of last session, and by all practically interested in it, whether as landlords, tenants or

valuers."—*Daily News*.

"A more complete volume never came under our notice."—*Worcester Herald*.

"This is a simple and useful summary of the provisions of the present statutes on this subject, with orders and forms for practical application."—*Standard*.

"It will enable any farmer or landowner to understand precisely what are the conditions at present existing as to compensation for improvements by law and by custom of the country."—*Chamber of Agriculture Journal*.

"He intends it for landowners, farmers, land stewards and the like. All who have any interest in landed property may read it to advantage."—*Land and Water*.

"Mr. Willis Bund has compressed into a simple and convenient form the information needful for understanding the bearing of the Agricultural Holdings Act on the law of compensation for unexhausted improvements."—*Saturday Review*.

FAWCETT'S LAW OF LANDLORD AND TENANT.

A COMPENDIUM OF THE LAW OF LANDLORD AND TENANT. By **WILLIAM MITCHELL FAWCETT, Esq.**, of Lincoln's Inn, Barrister-at-Law. 1 vol. 8vo. 14s. cloth.

"This new compendium of the law on a wide and complicated subject, upon which information is constantly required by a vast number of persons, is sure to be in request. It never wanders from the point, and being intended not for students of the law, but for lessors and lessees, and their immediate advisers, wisely avoids historical disquisitions, and uses language as untechnical as the subject admits."—*Law Journal*.

"Mr. Fawcett takes advantage of this characteristic of modern law to impart to his compendium a degree of *authenticity* which greatly enhances its value as a convenient medium of reference, for he has stated the law in the very words of the authorities."—*Law Magazine*.

"The amount of information compressed into the book is very large. The plan of the book is extremely good, and

the arrangement adopted has enabled the author to put together in one place the whole law on any particular branch of the subject, and to avoid repetitions. In this respect, though probably from its smaller size it must contain less information than Woodfall, it will be found far more convenient for ordinary use than that treatise."—*Solicitors' Journal*.

"Above all, it has been his purpose to state the law in the language of the authorities, presenting the principles enunciated in the very words of the judges. Another excellent feature is a concise summary of the effect of each enactment in the marginal notes. It will be seen from this that the book is thoroughly practical; and as such will doubtless find a favourable reception from the profession."—*Law Times*.

COOTE'S PROBATE PRACTICE.—Eighth Edition.

THE COMMON FORM PRACTICE OF THE HIGH COURT of JUSTICE in granting Probates and Administrations.
By HENRY CHARLES COOTE, F.S.A., late Proctor in Doctors' Commons, Author of "The Practice of the Ecclesiastical Courts," &c. &c. Eighth Edition. In 1 vol. 8vo., 26s. cloth; 30s. calf.

*. * *The Forms as printed in this work are in strict accordance with the Orders of Court and Decisions of the Right Hon. Sir James Hannen, and are those which are in use in the Principal Registry of the Probate Divisional Court.*

"This work first appeared soon after the abolition of ecclesiastical jurisdiction over probate and administration, and the establishment of the Court of Probate by 20 & 21 Viet. c. 77. That it has reached the eighth edition is sufficient attestation of its merit and popularity. Mr. Coote acknowledges the co-operation of his friend Mr. Frederic Kruckenberg; and it appears to us that these gentlemen have spared no pains to render this edition a perfect specimen of what a law book should be. In fact, it would be a difficult task to find a fault in 'Coote's Probate Practice;' and, with the ever increasing mass of probate business, it may be confidently predicted, as well as hoped, that this new edition will meet with even greater success than its predecessors."—*Law Journal*.

"The above is another name for what is commonly known to the profession as Coote's Probate Practice, a work about as indispensable in a solicitor's office as any book of practice that is known to us. The seventh edition is chiefly distinguishable from the sixth edition in this, that certain important modifications and alterations are effected which have been rendered necessary by the Judicature Acts. Judicial decisions subsequent to the last edition have been

carefully noted up. We notice several new and useful forms; and the author has not only attempted, but has in the main succeeded, in adopting the forms and directions under the old Probate practice, as embodied in previous editions of the work, to the new procedure under the Judicature Acts. Solicitors know that the difficulties in the way of satisfying the different clerks at Somerset House are frequently great, and there is nothing so likely to tend to simplicity of practice as Mr. Coote's book."—*Law Times*.

"Nearly five years have elapsed since the publication of the last edition of this book, which has long held a high reputation among solicitors, but we find little change in its contents. The Judicature Acts, which have rendered obsolete so many works of practice, have left this almost untouched. The chief changes in this edition appear to be the alteration of the headings of many of the forms; the insertion of several new cases and of some of the judgments of Dr. Bettsworth; of the fees to be taken by solicitors and paid to the Court in Common Form Business, as directed by the Rules of 1874; and a considerable increase in the number of forms in Non-contentious Business."—*Solicitors' Journal*.

SHELFORD'S RAILWAYS.—Fourth Edition, by Glen.

SHELFORD'S LAW OF RAILWAYS, containing the whole of the Statute Law for the Regulation of Railways in England, Scotland and Ireland. With Copious Notes of Decided Cases upon the Statutes, Introduction to the Law of Railways, and Appendix of Official Documents. Fourth Edition, by W. CUNNINGHAM GLEN, Barrister-at-Law, Author of the "Law of Highways," "Law of Public Health and Local Government," &c. 2 vols. royal 8vo. 63s. cloth; 75s. calf.

"Though we have not had the opportunity of going conscientiously through the whole of this elaborate compilation, we have been able to devote enough time to it to be able to speak in the highest terms of the judgment and ability with which it has been prepared. Its execution quite justifies the reputation which Mr. Glen has already acquired as a legal writer, and proves that no one could have been more properly singled out for the duty he has so well discharged. *The work must take its unquestionable position as the leading Manual of the Railway Law of Great Britain.* . . . The cases seem to have been examined, and their effect to be stated with much care and accuracy, and no channel from which information could be gained has been neglected. Mr. Glen, indeed, seems to be saturated with knowledge of his subject. . . . The value of the work is greatly increased by a number of supplemental decisions, which give all the cases up to the time of publication, and by an index which appears to be thoroughly exhaustive."

—*Law Magazine*.

"Mr. Glen has done wisely in preserving that reputation, and, as far as possible, the text of Shelford—though very extensive alterations and additions have been required. But he has a claim of his own. He is a worthy successor of the original author, and possesses much of the same industry, skill in arrangement and astuteness in enumerating the points really decided by cited cases. But we have said enough of a work already so well known."—*Law Times*.

"Mr. Glen has modestly founded his work as a superstructure on that of Mr. Leonard Shelford, but he has certainly claims to publish it as a purely independent composition. The toil has been as great, and the reward ought to be as complete, as if Mr. Glen had disre-

garded all his predecessors in the production of treatises on railway law. . . . Since the year 1864 he has been unceasingly engaged in collecting materials, and though he has been ready for the printer for some time, and has delayed the appearance of the volumes in the expectation of legislative changes in railway law, yet he has expended full five years of care and attention on his work. Let us hope that he will have no cause to think his labour has been in vain. *At any rate we may venture to predict that Mr. Cunningham Glen's edition of Shelford on Railways will be the standard work of our day in that department of law.*"—*Law Journal*.

"Far be it from us to under value Mr. Shelford's labours, or to disparage his merits. But we may nevertheless be permitted to observe that *what has hitherto been considered as 'the best work on the subject' (Shelford), has been immeasurably improved by the application of Mr. Glen's diligence and learning.* . . . Sufficient, however, has been done to show that it is in every respect worthy of the reputation which the work has always enjoyed."—*Justice of the Peace*.

"The practitioner will find here collected together all the enactments bearing on every possible subject which may come before him in connection with railways or railway travelling. Whatever questions may arise, the lawyer who has this book upon his shelves, may say to himself, 'If there has been any legislation at all connected with this branch of the subject I shall at once find it in Shelford'; and it needs not to be said that on this account the book will be a very 'comfortable' one to possess. The collection is equally exhaustive in the matter of rules, orders, precedents and documents of official authority."—*Solicitors' Journal*.

GRANT'S BANKERS AND BANKING COMPANIES.

By R. A. FISHER.—Continued to 1876.

GRANT'S TREATISE ON THE LAW RELATING TO BANKERS AND BANKING COMPANIES. Third Edition. With an Appendix containing the Statutes in force and Supplement to 1876. By R. A. FISHER, Esq., Judge of County Courts. Svo. 28s. cloth; 33s. calf.

"Eight years sufficed to exhaust the second edition of this valuable and standard work, we need only now notice the improvements which have been made. We have once more looked through the work, and recognize in it the sterling merits which have acquired for it the high position which it holds in standard legal literature. Mr. Fisher has annotated all the recent cases."—*Law Times*.

"Prior to the publication of Mr. Grant's work on this subject, no treatise containing the required information existed; and, since its appearance, such important alterations respecting banks and bankers have been introduced, that the work needed in many parts entire reconstruction and arrangement. The last two editions have been entrusted to the care of the gentleman whose name is attached to the work. Mr. Fisher's name is in itself a guarantee that his duties of editor have been ably and conscientiously performed. In this respect we can assure those

interested in the subject of this book, that they will in no respect be disappointed; obsolete and immaterial matter has been eliminated, and the present edition presents the existing law of bankers and banking companies as it at present exists."—*Justice of the Peace*.

"It is eight years since Mr. Fisher published the second edition of this practical book, and it now appears again re-edited by the same hand. Its steady sale shows that the public for whom it is written have recognized the kindness that was meant them, and makes a more elaborate recommendation superfluous. We must add, however, that the additions to the work, and the alterations in it which Mr. Fisher has made, are, as far as we can judge, real improvements, and that he has not failed to follow out the recent cases. The book used with care will no doubt be of great practical service to bankers and their legal advisers."—*Solicitors' Journal*.

DOWELL'S STAMP DUTIES AND STAMP LAWS.

A HISTORY and EXPLANATION of the STAMP DUTIES, containing Remarks on the Origin of Stamp Duties, a History of the Duties in this Country from their commencement to the present time, Observations on the past and the present State of the Stamp Laws, an Explanation of the System and the Administration of the Tax, Observations on the Stamp Duties in Foreign Countries and the Stamp Laws at present in force in the United Kingdom; with Notes, Appendices and a copious Index. By STEPHEN DOWELL, M.A., of Lincoln's Inn, Assistant Solicitor of Inland Revenue. Svo. 12s. 6d. cloth.

FISHER'S LAW OF MORTGAGE—Third Edition.

The LAW of MORTGAGE and OTHER SECURITIES UPON PROPERTY. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister-at-Law. 2 vols. roy. 8vo. 60s. cloth; 72s. calf.

"This work has built up for itself, in the experienced opinion of the profession, a very high reputation for carefulness, accuracy and lucidity. This reputation is fully maintained in the present edition. The law of securities upon property is confessedly intricate, and, probably, as the author justly observes, embraces a greater variety of learning than any other single branch of the English law. At the same time, an accurate knowledge of it is essential to every practising barrister, and of daily requirement amongst solicitors. To all such we can confidently recommend Mr. Fisher's work, which will, moreover, prove most useful reading for the student, both as a storehouse of information and as intellectual exercise."—*Law Magazine*.

"Those who are familiar with the work know that it is never prolix, that it is accurate and complete: and we think that the present edition will not diminish its reputation in these respects. On subjects upon which we have examined it we have found the cases diligently collected and carefully stated, and the effect of the new legislation very concisely given. The various points upon which the Judicature Act has a bearing on Mr. Fisher's subject are very well annotated; and not only on this subject, but as the general result of an examination of this edition, we can say that it contains evidence of unremitting care and industry."—*Solicitors' Journal*.

"His work has long been known as the standard work on the law of mortgages, and he has now published his third edition. The object and scope of his work is probably familiar to most of our readers. It is, as the author himself says, 'to explain the nature of the different kinds of securities, the rights and equities which they create, and the manner of and circumstances attending their discharge. The earlier parts of the work have been recast, and now appear in the language and arrangement used in the completed part of the 'Digest

of the Law of Mortgage and Lien,' which Mr. Fisher designed and executed for the Digest Commission. This system of classification, by adoption of comprehensive and formally stated propositions, is the right mode of framing a work of this nature, and the present edition of Mr. Fisher's work is, without doubt, a vast improvement on the last edition. The form and style admit of little exception. The work is not much enlarged in bulk; but, besides the new statutes and decisions relating to the subject, the author has added a great number of references to contemporary reports not formerly cited. In conclusion we may compliment Messrs. Butterworths on the excellent type and correct printing of these volumes; and the handsome and convenient style in which they have been got up."—*Law Journal*.

"We have received the third edition of the Law of Mortgage, by William Richard Fisher, Barrister-at-Law, and we are very glad to find that vast improvements have been made in the plan of the work, which is due to the incorporation therein of what Mr. Fisher designed and executed for the abortive Digest Commission. In its present form, embracing as it does all the statute and case law to the present time, the work is one of great value."—*Law Times*.

"Since the publication of the second edition its author has bestowed still further consideration on the subject of mortgage and other securities upon property during his employment by the Digest of Law Commissioners. He has embodied all the recent statutes and decisions affecting his subject, besides adding a great number of references to contemporary reports not cited in the former editions; and certainly, if anything could console a lawyer in finding the most familiar volumes upon his shelves superseded by later editions, it would be to find that the later editions are so exuberant with additional value as is this of Fisher on Mortgages."—*Irish Law Times*.

LEWIS'S INTRODUCTION TO CONVEYANCING.

PRINCIPLES OF CONVEYANCING EXPLAINED and **ILLUSTRATED** by **CONCISE PRECEDENTS**. With an Appendix on the Effect of the Transfer of Land Act in Modifying and Shortening Conveyances. By **HUBERT LEWIS, B.A.**, late Scholar of Emmanuel College, Cambridge, of the Middle Temple, Barrister-at-Law. Svo. 18s. cloth.

"Mr. Lewis is entitled to the credit of having produced a very useful, and, at the same time, original work. This will appear from a mere outline of his plan, which is very ably worked out. The manner in which his dissertations elucidate his subject is clear and practical, and his expositions, with the help of his precedents, have the best of all qualities in such a treatise, being eminently judicious and substantial. Mr. Lewis's work is conceived in the right spirit. Although a learned and goodly volume, it may yet, with perfect propriety, be called a 'handy book.' It is besides a courageous attempt at legal improvement; and it is, perhaps, by works of such a character that law reform may be best accomplished." *Law Magazine and Review*.

"By the diligent and painstaking student who has duly mastered the Law of property, this work will undoubtedly be hailed as a very comprehensive exponent of the Principles of Conveyancing." *Legal and Artistic Works Magazine*.

"The perusal of the work has given us much pleasure. It shows a thorough knowledge of the various subjects

treated of, and is clearly and intelligibly written. Students will now not only be able to become proficient draftsmen, but, by carefully studying Mr. Lewis's dissertations, may obtain an insight into the hitherto neglected Principles of Conveyancing." *Legal Lawman*.

"On the whole, we consider that the work is deserving of high praise, both for design and execution. It is wholly free from the vice of bookmaking, and indicates considerable reflection and learning. Mr. Lewis has at all events succeeded in producing a work to meet an acknowledged want, and we have no doubt he will find many grateful readers amongst more advanced, not less than among younger students." *Scholar's Journal and Reporter*.

"Mr. Lewis has contributed a valuable aid to the Law student. He has condensed the Practice of Conveyancing into a shape that will facilitate its retention on the memory, and his Precedents are usefully arranged as a series of progressive lessons, which may be either used as illustrations or exercises." *Law Times*.

LEWIS'S INTRODUCTION TO EQUITY DRAFTING.

PRINCIPLES OF EQUITY DRAFTING, with an **APPENDIX** of **FORMS**. By **HUBERT LEWIS, B.A.**, of the Middle Temple, Barrister-at-Law, Author of "Principles of Conveyancing Explained and Illustrated." Post Svo. 12s. cloth.

. This work, intended to explain the general principles of Equity Drafting, as well as to exemplify the usages of the Court of Chancery, will be a useful text-book, especially to the New Equity Jurisdiction of the County Courts.

"Practically the rules that apply to the drafting and reading of bills will apply to the composition of the County Court document that will be substituted for the bill. Mr. Lewis's work is therefore likely to have a much wider circle of readers than he could have anticipated when he commenced it, for almost every page will be applicable to County Court Practice, should the bill, in any shape or under any title, be retained in the new jurisdiction, without it we fear that equity in the County Courts

will be a mass of uncertainty, with it every practitioner must learn the art of equity drafting, and he will find no better teacher than Mr. Lewis." *Law Times*.

"We have little doubt that this work will soon gain a very favourable place in the estimation of the Profession. It is written in a clear and attractive style, and is plainly the result of much thoughtful and conscientious labour." *Law Magazine and Review*.

BEDFORD'S FINAL EXAMINATION GUIDE TO PROBATE AND DIVORCE.

THE FINAL EXAMINATION GUIDE to the LAW of PROBATE and DIVORCE: containing a Digest of Final Examination Questions with the Answers. By E. H. BEDFORD, Solicitor, Temple, Author of the "Final Examination Guide to the Practice of the Supreme Court of Judicature," &c. Post 8vo. 4s.

"The examiners have added as extra subjects in the 'Final' the Probate and Divorce Law. Mr. E. H. Bedford, Solicitor, who seems to be always anxious to keep abreast of the tide, has prepared a Guide or Manual to assist his

pupils and candidates generally in the examination in acquiring due knowledge of these subjects. His Guide takes the favourite form of questions and answers, and seems to have been carefully and accurately compiled."—*Law Journal*.

BEDFORD'S FINAL EXAMINATION GUIDE.

THE FINAL EXAMINATION GUIDE TO THE PRACTICE of the SUPREME COURT of JUDICATURE, containing a Digest of the Final Examination Questions, with many New Ones, with the Answers, under the Supreme Court of Judicature Act. By EDWARD HENSLOWE BEDFORD, Solicitor, Temple. In 1 vol. 8vo. 7s. 6d. cloth.

"Every conceivable question appears to have been asked and a full answer is given in each case. Mr. Bedford really knows better than we do what students require, and we have no doubt that his compilation will be extensively used. It contains a sufficient index."—*Law Times*.

"Mr. Bedford, with his usual diligence and promptitude, has contemporaneously with the commencement of the operation of the Judicature Acts published for the benefit of his pupils and other law candidates for the Final Examination a Digest of Questions

which are likely to be set down under those Acts and the New Rules, with answers thereto. The chief point is that the answers should be exhaustive as well as concise, and in this respect great merit is shown in the present Digest."—*Law Journal*.

"Mr. Bedford's Final Examination Guide supplies a want which will be much felt by students as to what they are to read with reference to the new practice. The Guide and Time Table by the same author will be found useful helps to students in perusing the Judicature Acts."—*Law Examination Journal*.

By the same Author, on a Sheet, 1s.

A TABLE of the LEADING STATUTES for the INTERMEDIATE and FINAL EXAMINATIONS in Law, Equity and Conveyancing.

TOMKINS & JENCKEN'S MODERN ROMAN LAW.

COMPENDIUM OF THE MODERN ROMAN LAW. Founded upon the Treatises of Puchta, Von Vangerow, Arndts, Franz Möhler, and the Corpus Juris Civilis. By FREDERICK J. TOMKINS, Esq., M.A., D.C.L., Author of the "Institutes of Roman Law," translator of "Gaius," &c., and HENRY DIEDRICH JENCKEN, Esq., Barristers-at-Law, of Lincoln's Inn. 8vo. 14s. cloth.

UNDERHILL'S LAW OF TORTS.—Second Edition.

A SUMMARY OF THE LAW OF TORTS, OR WRONGS INDEPENDENT OF CONTRACT. By ARTHUR UNDERHILL, B.A., of Lincoln's Inn, Esq., Barrister-at-Law. Second Edition. Post 8vo. 8s. cloth.

"He has set forth the elements of the law with clearness and accuracy. The little work of Mr. Underhill is inexpensive and may be relied on."—*Law Times*.

"The plan is a good one and has been honestly carried out, and a good index facilitates reference to the contents of the book."—*Justice of the Peace*.

"Mr. Underhill's ability in making a clear digest of the subject treated of in this volume is conspicuous. Many works would have to be consulted for the information here concisely given, so that practitioners as well as students will find it useful."—*News of the World*.

"His book is so clearly written that it is easily comprehensible. To the law

student, for whom it is more particularly written, it may be recommended both for its simplicity and accuracy."—*Morning Advertiser*.

"Intended for the student who desires to have principles before entering into particulars, and we know no book on the subject so well adapted for the purpose."—*Law Examination Journal*.

"We strongly recommend the manual to students of both branches of the profession."—*Preliminary Examination Journal*.

"A work which will, we think, be found instructive to the beginner, and a useful handybook for the practitioner in local courts."—*Public Opinion*.

**UNDERHILL'S LAW OF TRUSTS AND TRUSTEES.**

A CONCISE MANUAL OF THE LAW RELATING TO PRIVATE TRUSTS AND TRUSTEES. By ARTHUR UNDERHILL, M.A., of Lincoln's Inn and the Chancery Bar, Barrister-at-Law. Post 8vo. 8s. cloth.

"The Courts of Equity have always exercised a very extensive authority in all matters of trust, and the object of this work is to present to the reader the principles in relation to the law of private trusts. The author has divided his subjects into seventy-six articles, and he so treats his subjects that it will not be found a difficult matter for a person of ordinary intelligence to retain the matter therein contained, which must be constantly necessary, not only to the professional man, but also for all those who may have taken upon themselves the responsibilities of a trustee."—*Justice of the Peace*.

"We recently published a short review or notice of Mr. A. F. Leach's 'Digest of the Law of Probate Duty,' and remarked that it was framed after the model of Sir Fitzjames Stephen's

'Digest of the Criminal Law and Law of Evidence from the Indian Acts,' and which has been followed by Mr. Pollock in his 'Digest of the Law of Partnership.' Mr. Underhill has, in the above-named volume, performed a similar task in relation to the 'Law of Trusts.' In seventy-six articles he has summarized the principles of the 'Law of Trusts' as distinctly and accurately as the subject will admit, and has supplemented the articles with illustrations."—*Law Journal*.

"The work is intended for those who cannot study larger tomes, and Mr. Underhill is sanguine that the student will be able to learn and remember all that he has written. We believe this to be quite possible, and commend the work to the attention of students."—*Law Times*.

PHILLIMORE'S INTERNATIONAL LAW.—3rd edit.**COMMENTARIES ON INTERNATIONAL LAW.**

By the Right Hon. Sir ROBERT PHILLIMORE, Knt., P.C., Judge in the Probate, Matrimonial, Divorce and Admiralty Division of the High Court of Justice. Third Edition. Vol. 1 in 8vo.

[*In the Press.*]

* * Vol. II., second edition, price 28s.; Vol. III., second edition, price 36s.; Vol. IV., second edition, price 34s. cloth, may be had separately to complete sets.

Extract from Pamphlet on "American Neutrality," by GEORGE BEMIS (Boston, U.S.).—"Sir Robert Phillimore, the present Queen's Advocate, and author of the most comprehensive and systematic 'Commentaries on International Law' that England has produced."

"The authority of this work is admittedly great, and the learning and ability displayed in its preparation have been recognized by writers on public law both on the Continent of Europe and in the United States. With this necessarily imperfect sketch we must conclude our notice of the first volume of a work which forms an important contribution to the literature of public law. The book is of great utility, and one which should find a place in the library of every civilian."—*Law Magazine.*

"We cordially welcome a new edition of vol. 1. It is a work that ought to be studied by every educated man, and which is of constant use to the public writer and statesman. We wish, indeed, that our public writers would read it more abundantly than they have done, as they would then avoid serious errors in discussing foreign questions. Any general criticism of a book which has been received as a standard work would be superfluous; but we may remark that whilst Sir Robert strictly adheres to the canons of legal authorship, and never gives a statement without an authority, or offers a conclusion which is not manifestly deducible from established facts or authoritative utterances, yet so lucid is his style, we had almost said so popular, so clear is the enunciation of principles, so graphic the historical portions, that the book may be read with pleasure as well as profit."—*Law Journal.*

"It is the most complete repository of matters bearing upon international law that we have in the language. We need not repeat the commendations of the text itself as a treatise or series of treatises which this journal expressed upon the appearance of the two first volumes. The reputation of the Author is too well established and too widely known. We content ourselves with testifying to the fulness and thoroughness of the work as a compilation after an inspection of the three volumes. (2nd

edition)."—*Boston (United States) Daily Advertiser.*

"Sir Robert Phillimore may well be proud of this work as a lasting record of his ability, learning and his industry. Having read the work carefully and critically, we are able to highly recommend it."—*Law Journal (second notice).*

"We have within a short period briefly noticed the previous volumes of the important work of which the fourth volume is now before us. We have more than once recognized the ability and profound research which the learned author has brought to bear upon the subject, but this last volume strikes us as perhaps the most able and lucid, and, in addition to these merits, it deals with a division of international jurisprudence which is of very great interest, namely, private international law or comity."—*Law Times.*

"The second edition of Sir Robert Phillimore's Commentaries contains a considerable amount of valuable additional matter, bearing more especially on questions of international law raised by the wars and contentions that have broken out in the world since the publication of the first edition. Having upon a former occasion discussed at some length the general principles and execution of this important work, we now propose to confine ourselves to a brief examination of a single question, on which Sir Robert Phillimore may justly be regarded as the latest authority and as the champion of the principles of maritime law, which, down to a recent period, were maintained by this country, and which were at one time accepted without question by the maritime powers. Sir Robert Phillimore has examined with his usual learning, and established without the possibility of doubt, the history of the doctrine 'free ships, free goods,' and its opposite, in the third volume of his 'Commentaries' p. 302."—*Edinburgh Review*, No. 236, October, 1876.

BAINBRIDGE ON MINES.—4th Edit., by Archibald Brown.

A TREATISE on the LAW of MINES and MINERALS. By WILLIAM BAINBRIDGE, Esq., F.G.S., of the Inner Temple, Barrister-at-Law. Fourth Edition. By ARCHIBALD BROWN, M.A. Edin. and Oxon. of the Middle Temple, Barrister-at-Law. This Work has been wholly re-cast, and in the greater part re-written. It contains, also, several chapters of entirely new matter, which have obtained at the present day great Mining importance. Svo. 45s. cloth.

"Much of the old work has been re-written, and there is much in this edition that is entirely new. The whole of the law relating to mines and minerals is treated in an exhaustive manner. As coming more particularly within our own peculiar province, we may notice Chapter XII., which deals with criminal offences relating to mines; Chapter XIII., as to the statutory regulation and inspection of mines; and Chapter XV., which contains the law relating to the rating of mines and quarries, comprising the liability of coal and other mines and quarries to the poor and other rates. The tenancy improvements to be included. Allowances and deductions to be made. Rateable value, and all other matters necessary to make this portion of the work most valuable to those concerned in the rating of such property. The appendix contains a valuable collection of conveyancing forms—Local Customs—A Glossary of English Mining Terms, and a full and well arranged Index facilitates the reference to the

contents of the volume. The cases cited are brought down to a very recent date. The work undertaken by Mr. Brown was an arduous one, and he has satisfactorily performed it."—*Justice of Peace on the Coast*.

"This work must be already familiar to all readers whose practice brings them in any manner in connection with mines or mining, and they well know its value. We can only say of this new edition that it is in all respects worthy of its predecessors."—*Law Times on 3rd edit.*

"It would be entirely superfluous to attempt a general review of a work which has for so long a period occupied the position of the standard work on this important subject. Those only who, by the nature of their practice, have learned to lean upon Mr. Bainbridge as on a solid staff, can appreciate the deep research, the admirable method, and the graceful style of this model treatise."—*Law Journal on 3rd edit.*

ADAMS'S LAW OF TRADE-MARKS.

A TREATISE ON THE LAW OF TRADE-MARKS: with the Trade-Marks Regulation Act, 1875, and the Lord Chancellor's Rules. By F. M. ADAMS, of the Middle Temple, Esq., Barrister-at-Law. Svo. 7s. 6d. cloth.

"A comprehensive treatise on the subject of the law of trade-marks. We can recommend Mr. Adams' work to the favourable attention of patentees, manufacturers and others interested in

the use of trade-marks."—*Chambers of Commerce Chronicle*.

"The subject of trade-marks is beset with difficulties, in the elucidation of which this work will be valuable."—*City Press*.

SIR T. ERSKINE MAY'S PARLIAMENTARY PRACTICE.—Eighth Edition.

A TREATISE ON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT. By Sir THOMAS ERSKINE MAY, D.C.L., K.C.B., Clerk of the House of Commons and Bencher of the Middle Temple. Eighth Edition, Revised and Enlarged. 8vo. 42s. cloth.

CONTENTS: Book I. Constitution, Powers and Privileges of Parliament.—Book II. Practice and Proceedings in Parliament.—Book III. The Manner of passing Private Bills, with the Standing Orders in both Houses, and the most recent Precedents.

"A work, which has risen from the position of a text book into that of an authority, would seem to a considerable extent to have passed out of the range of criticism. It is quite unnecessary to point out the excellent arrangement, accuracy and completeness which long ago rendered Sir T. E. May's treatise the standard work on the law of Parliament. Not only are points of Parliamentary law discussed or decided since the publication of the last edition duly noticed in their places, but the matter thus added is well digested, tersely presented and carefully interwoven with the text."—*Solicitors' Journal*.

"Fifty pages of new matter have been added by Sir Thomas May in his seventh edition, thus comprising every alteration in the law and practice of Parliament, and all material precedents relating to public and private business since the publication of the sixth edition. We need make no comment upon the value of the work. It is an accepted authority and is undeniably the law of Parliament. It has been brought up to the latest date, and should be in the hands of every one engaged in Parliamentary life, whether as a lawyer or as a senator."—*Law Times*.

NASMITH'S INSTITUTES.

THE INSTITUTES OF ENGLISH PUBLIC LAW, embracing an Outline of General Jurisprudence, the Development of the British Constitution, Public International Law, and the Public Municipal Law of England. By DAVID NASMITH, Esq., LL.B., of the Middle Temple, Barrister-at-Law, Author of the Chronometrical Chart of the History of England, &c., Joint Translator of Ortolan's History of Roman Law. Post 8vo. 1 vol. 12s. cl.

"We believe the plan of the book is the right one."—*Law Magazine*.

THE INSTITUTES OF ENGLISH PRIVATE LAW, embracing an Outline of the Substantive Branch of the Law of Persons and Things, adapted to the New Procedure. By DAVID NASMITH, LL.B., of the Middle Temple, Barrister-at-Law, Author of "Institutes of English Public Law," &c. &c. In 2 vols. or books, post 8vo. 21s. cloth.

"Mr. Nasmith has evidently expended much labour and care in the compilation and arrangement of the present work, and so far as we have been able to test

it, the bulk of his Treatise, which is confined to a concise exposition of the existing law, appears to merit the praise of accuracy and clearness."—*Law Magazine*.

CLARK'S DIGEST OF THE HOUSE OF LORDS CASES.

A DIGESTED INDEX TO ALL THE REPORTS in the HOUSE OF LORDS, from the commencement of the Series by Dow, in 1814, to the end of the Eleven Volumes of House of Lords Cases; with References to more recent Decisions. By CHARLES CLARK, Esq., Q.C., Reporter by Appointment to the House of Lords. 1 vol. royal 8vo. 31s. 6d. cloth.

"The decisions of the supreme tribunal of this country, however authoritative in themselves, were not, until of late years, at all familiar to the great body of the legal profession; the early reports of them being in the hands of but few persons. In that tribunal, more than in any other, questions can be considered, as they have been, upon purely legal principles, freed from the fetters

and obstructions of mere precedent. The acknowledged eminence of the noble and learned persons by whom the decisions have been pronounced, gives them a value beyond their official authoritativeness. It is hoped that this Digest will have the effect of making the profession at large familiarly acquainted with them."—*Prefatory Notice.*

FULTON'S Manual of CONSTITUTIONAL HISTORY.

A MANUAL OF CONSTITUTIONAL HISTORY, founded on the Works of Hallam, Creasy, May and Broom: comprising all the Fundamental Principles and the Leading Cases in Constitutional Law. By FORRESTER FULTON, Esq., LL.D., B.A., University of London, and of the Middle Temple, Barrister-at-Law. Post 8vo. 7s. 6d. cloth.

"After carefully looking through the several chapters, we may fairly say the book is well done, and that the object of aiding the student in his first entry on the wide study of Constitutional Law and History is attained."—*The Law.*

"Copious use has been made by Mr. Fulton of all the leading authorities on the subject, and he writes clearly and intelligibly. There is a full and carefully prepared Index."—*Law Times.*

"The method of its arrangement is decidedly original and well calculated to meet the object with which the book was written, namely, to assist law students in preparing for their examinations, as history now very properly forms an important part in all legal examinations. Mr. Fulton's, for practical information, and for student's purposes, is by far the best Manual of Constitutional History with which we are acquainted."—*Irish Law Times.*

"So far as it goes it is not without merit. The former part is written with care and clearness."—*Solicitors' Journal.*

"The work before us is one which has long been wanted, and Mr. Fulton appears to have taken great pains to

make it thoroughly useful and reliable."—*Law Society Gazette.*

"The general reader will be much pleased with the chapters on the privileges of parliament."—*Standard.*

"A good reference book, as well as a book that ought to be read in the first instance straight through."—*John Bull.*

"The author has spared no pains, and has succeeded in the somewhat difficult task of presenting the results of a wide range of reading in a well digested form. Mr. Fulton may be congratulated upon the very successful accomplishment of a by no means easy task; his book supplies a felt want."—*Public Opinion.*

"Mr. Fulton has compiled a Manual of Constitutional History to aid beginners in their studies; the extracts he has given from his authorities appear to be well chosen."—*Daily News.*

"It is useless for an ordinary student simply to read a ponderous work on the Constitution, unless at the same time he is able to assimilate its results. Mr. Fulton has recognized this difficulty, and the result is the truly admirable little manual to which we call the attention of our readers."—*Canadian News.*

TUDOR'S LEADING CASES ON REAL PROPERTY.— **Third Edition.**

A SELECTION of LEADING CASES on the LAW relating to REAL PROPERTY, CONVEYANCING, and the CONSTRUCTION of WILLS and DEEDS; with Notes. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law, Author of "Leading Cases in Equity." Third Edition. 1 thick vol. royal 8vo. 2l. 12s. 6d. cloth.

"The Second Edition is now before us, and we are able to say that the same extensive knowledge and the same laborious industry as have been exhibited by Mr. Tudor on former occasions characterize this later production of his legal authorship; and it is enough at this moment to reiterate an opinion that Mr. Tudor has well maintained the high legal reputation which his standard works have achieved in all countries where the English language is spoken, and the decisions of our Courts are quoted."—*Law Magazine and Review*.

"The work before us comprises a digest of decisions which, if not exhaustive of all the principles of our real property code, will at least be found to leave nothing untouched or unelaborated under the numerous legal doctrines to which the cases severally relate. To Mr. Tudor's treatment of all these subjects, so complicated and so varied, we accord our entire commendation. There are no omissions of any important cases relative to the various branches of the law comprised in the work, nor are there any omissions or defects in his statement of the law itself applicable to the cases discussed by him. We cordially recommend the work to the practitioner and student alike, but especially to the former."—*Solicitors' Journal and Reporter*.

"In this new edition, Mr. Tudor has carefully revised his notes in accordance with subsequent decisions that have modified or extended the law as previously expounded. This and the other volumes of Mr. Tudor are almost a law library in themselves, and we are satisfied that the student would learn more law from the careful reading of them, than he would acquire from double the time given to the elaborate treatises which learned professors recommend the student to peruse, with entire forgetfulness that time and brains are limited, and that to do what they advise would be the work of a life."—*Law Times*.

"This well-known work needs no recommendation. Justice, however, to Mr. Tudor requires us to say that familiarity with its pages from its first appearance have convinced us of its value, not only as a repository of cases, but a judicious summary of the law on the subjects it treats of. So far as we can see, the author has brought down the cases to the latest period, and altogether there have been added about 170 pages of notes in the present edition. As a guide to the present law the book will now be of great value to the lawyer, and it will be especially useful to him when away from a large library."—*Jurist*.

WOOLRYCH ON SEWERS.—Third Edition.

A TREATISE ON THE LAW OF SEWERS, including the Drainage Acts. By HUMPHRY W. WOOLRYCH, Serjeant-at-Law. Third Edition, with considerable Additions and Alterations. 8vo. 12s. cloth.

"Two editions of it have been speedily exhausted, and a third called for. The author is an accepted authority on all subjects of this class."—*Law Times*.

"This is a third and greatly enlarged edition of a book which has already obtained an established reputation as the most complete discussion of the subject adapted to modern times. Since the treatise of Mr. Serjeant Callis in the early part of the 17th century, no work

filling the same place has been added to the literature of the profession. It is a work of no slight labour to digest and arrange this mass of legislation—this task, however, Mr. Serjeant Woolrych has undertaken, and an examination of his book will, we think, convince the most exacting that he has fully succeeded. No one should attempt to meddle with the Law of Sewers without its help."—*Solicitors' Journal*.

MOSELY'S ARTICLED CLERKS' HANDY BOOK.—By Bedford.

Just published, in 1 Vol., post 8vo., 8s. 6d. cloth.

MOSELY'S PRACTICAL HANDY-BOOK OF ELEMENTARY LAW, designed for the Use of ARTICLED CLERKS, with a Course of Study, and Hints on Reading for the Intermediate and Final Examinations. Second Edition, by EDWARD HENSLÖWE BEDFORD, Solicitor, Editor of the "Preliminary," "Intermediate," and "Final," &c., &c.

"This book cannot be too strongly recommended to every one who contemplates becoming a solicitor."—*Law Examination Journal*.

"Mr. E. H. Bedford, indefatigable in his labours on behalf of the articulated clerk, has supervised a new edition of Mosely's Handy Book of Elementary

Law. It will certainly not be the fault of either author or editor if the years spent under articles are not well spent, and if the work required to lay a sound foundation of legal knowledge is not done with that 'knowledge' of which they so emphatically declare the necessity."—*Law Magazine*.



CUTLER & GRIFFIN'S INDIAN CRIMINAL LAW.

AN ANALYSIS OF THE INDIAN PENAL CODE, including the INDIAN PENAL CODE AMENDMENT ACT, 1870. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister-at-Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London, and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister-at-Law. 8vo. 6s. cloth.



GOLDSMITH'S EQUITY.—Sixth Edition.

THE DOCTRINE AND PRACTICE OF EQUITY: or a concise Outline of Proceedings in the High Court of Chancery, designed principally for the Use of Students. Sixth Edition, according to the recent Statutes and Orders. By GEORGE GOLDSMITH, Esq., M.A., Barrister-at-Law. Post 8vo. 18s. cloth.

"A well-known law student's book, the best, because the most thoroughly complete, yet simplified, instructor in the principles of equity that has ever been provided for him."—*Law Times*.

"The whole work is elaborated by Mr. Goldsmith with evident care and a determination to deal with all that can come within the scope of the title. It is characterized by comprehensiveness and at the same time conciseness, by clearness of diction and attractiveness of style and avoidance of technicalities which might prove embarrassing to the student, and a close adherence to the purpose as expressed in the preface."—*Law Journal*.

"It is difficult to know which to praise most, the excellence and dignity of the style, or the exhaustiveness of the information furnished to the reader. Mr. Goldsmith's plan corresponds to some extent with that adopted by Mr. Haynes in his excellent 'Outlines of Equity,' but his work is more complete than that of Mr. Haynes."—*Law Examination Journal*.

"If a student were confined to the selection of one book on equity, both for its doctrine and practice, he could hardly do better than choose the one before us."—*Solicitors' Journal*.

CHRISTIE'S CRABB'S CONVEYANCING.— Fifth Edition, by Shelford.

CRABB'S COMPLETE SERIES OF PRECEDENTS in CONVEYANCING and of COMMON and COMMERCIAL FORMS in Alphabetical Order, adapted to the Present State of the Law and the Practice of Conveyancing; with copious Prefaces, Observations and Notes on the several Deeds. By J. T. CHRISTIE, Esq., Barrister-at-Law. Fifth Edition, with numerous Corrections and Additions, by LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. 2 vols. roy. 8vo. 3l. cloth; 3l. 12s. calf.

* * * *This work, which embraces both the Principles as well as the Practice of Conveyancing contains likewise every description of Form wanted for Commercial Purposes.*

GENERAL TABLE OF HEADS OF PREFACES AND FORMS.

Abstracts.—Accounts.—Acknowledgments.—Acquittances.—Admittances.—Affidavits, Affirmations or Declarations.—Agreements: to relinquish Business: to Guarantee: for a Lease: before Marriage: for a Partition: between Principal and Agent: for the Sale and Purchase of Estates: for Sale of Copyhold Estates: for Sale of Leasholds: for Sale of an Advowson.—Annuity: secured on Copyholds.—Annuities: Assignments of.—Appointments: of Guardians.—Apportionment.—Apprenticeship: to the Sea Service: to an Attorney: Assignment of.—Arbitration: Award.—Assignments: Bonds: Leases: Patents: Pews: Policies of Insurance: Reversionary Interests.—Attestations.—Attornments.—Auctions: Particulars of Sale.—Bargains and Sales: of Timber.—Bills of Sale of Goods.—Bonds: Administration: Receiver pending Suit: Post Obitt: Stamps on.—Certificates.—Composition: Conveyances in Trust for Creditors.—Conditions: of Sale.—Confirmations.—Consents.—Copartnership: Dissolution of Copartnership.—Covenants: Stamps on: for production of Title Deeds.—Declarations.—Deeds: I. Nature of Deeds in General: II. Requisites of a Deed: III. Formal Parts of Deeds: IV. Where a Deed is necessary or otherwise: V. Construction of Deeds: VI. Avoiding of Deeds: VII. Proof of Deeds: VIII. Admission of Parol Evidence as to Deeds: IX. Possession of Deeds: X. Stamp Duty on Deeds.—Defeasances.—Demises.—Deputation.—Disclaimers.—Disentailing Deeds.—Distress: Notices of.—Dower.—Enfranchisements.—Exchanges.—Fcoffments.—Further Charges.—Gifts.—Grants.—Grants of Way or Road.—Indemnities.—Leases: I. Nature of Leases in General: II. Requisites to a Lease: III. Parts of a Lease: IV. Incidents to a Lease: V. Stamps on Leases.—Letters of Credit.—Licences.—Mortgages: of Copyholds: of Leasholds: Transfer of: Stamp Duty on.—Notes, Orders, Warrants, &c.—Notices: to Quit.—Partition.—Powers: of Attorney.—Presentation.—Purchase Deeds: Conveyance of Copyholds: Assignments of Leasholds: Stamps on.—Recitals.—Releases or Conveyances: or Discharges.—Renunciations or Disclaimers.—Resignations.—Revocations.—Separation.—Settlements: Stamp Duty on.—Shipping: Bills of Lading: Bills of Sale: Bottomary and Respondentia Bonds: Charter Parties.—Surrenders.—Wills: 1. Definition of Will and Codicil: 2. To what Wills the Act 7 Will. 4 & 1 Vict. c. 26 does not apply: 3. What may be disposed of by Will: 4. Of the capacity of Persons to make Wills: 5. Who may or who may not be Devises: 6. Execution of Wills: 7. Publication of Wills: 8. Revocation of Wills: 9. Lapse of Devises and Bequests: 10. Provisions and Clauses in Wills: 11. Construction of Wills.

"In carefulness we have in him a second Crabb, in erudition Crabb's superior; and the result is a work of which the original author would have been proud, could it have appeared under his own auspices. It is not a book to be quoted, nor indeed could its merits be exhibited by quotation. It is essentially a book of practice, which can only be described in rude outline and dismissed with applause, and a recom-

mendation of it to the notice of those for whose service it has been so laboriously compiled."—*Law Times*.

"Mr. Shelford has proved himself in this task to be not unworthy of his former reputation. To those familiar with his other works it will be a sufficient recommendation of this work that Mr. Shelford's name appears on the title-page; if there be any who are not well acquainted with them, we ven-

Christie's Crabb's Conveyancing—continued.

ture to recommend to such the work before us, as the most generally useful and convenient collection of precedents in conveyancing, and of commercial forms for ordinary use, which are to be had in the English language."—*Solicitors' Journal and Reporter*.

"To this important part of his duty—the remodelling and perfecting of the Forms—even with the examination which we have already been able to afford this work, we are able to affirm, that the learned editor has been eminently successful and effected valuable

improvements."—*Law Magazine and Review*.

"It possesses one distinctive feature in devoting more attention than usual in such works to forms of a commercial nature. On the whole the two volumes of Crabb's Precedents, as edited by Mr. Leonard Shelford, will be found extremely useful in a solicitor's office, presenting a large amount of real property learning, with very numerous precedents; indeed we know of no book so justly entitled to the appellation of 'handy' as the fifth edition of Mr. Crabb's Precedents."—*Law Chronicle*.

CUTLER'S LAW OF NATURALIZATION.

THE LAW OF NATURALIZATION as Amended by the Act of 1870. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister-at-Law, Editor of "Powell's Law of Evidence," &c. 12mo. 3s. 6d. cloth.

"Professor Cutler's book is a useful summary of the law and of the changes which have been made in it. The act is given in full with a useful index."—*Law Magazine*.

"Mr. Cutler, in the work before us, lucidly explains the state of the law previous to the recent statute, and shows the alterations produced by it, so that a careful perusal of his book will enable the reader fully to comprehend the

present state of the law upon this most important subject."—*Justice of the Peace*.

"The author's position as Professor of English Law and Jurisprudence is a guarantee of his legal competence, whilst his literary abilities have enabled him to clothe his legal knowledge in language which laymen can understand without being misled by it."—*Johanna Bull*.

COOTE'S ADMIRALTY PRACTICE.—Second Edition.

THE PRACTICE OF THE HIGH COURT OF ADMIRALTY OF ENGLAND; also the Practice of the Judicial Committee of Her Majesty's Most Honourable Privy Council in Admiralty Appeals, with Forms and Bills of Costs. By HENRY CHARLES COOTE, F.S.A., one of the Examiners of the High Court of Admiralty, Author of "The Practice of the Court of Probate," &c. Second Edition, almost entirely re-written; and with a SUPPLEMENT containing the County Court Practice in Admiralty, the Act, Rules, Orders, &c. 8vo. 16s. cloth.

. This work contains every Common Form in use by the Practitioner in Admiralty, as well as every description of Bill of Costs in that Court, a feature possessed by no other work on the Practice in Admiralty.

"Mr. Coote, being an Examiner of the Court, may be considered as an authoritative exponent of the points of which he treats. His treatise is, sub-

stantially considered, everything that can be desired to the practitioner."—*Law Magazine*.

ORTOLAN'S ROMAN LAW, Translated by **PRICHARD** and **NASMITH**.

THE HISTORY OF ROMAN LAW, from the Text of Ortolan's *Histoire de la Législation Romaine et Généralisation du Droit* (edition of 1870). Translated, with the Author's permission, and Supplemented by a Chronometrical Chart of Roman History. By **I. T. PRICHARD, Esq., F.S.S.**, and **DAVID NASMITH, Esq., LL.D.**, Barristers-at-Law. 8vo. 28s. cloth.

"We know of no work, which, in our opinion, exhibits so perfect a model of what a text-book ought to be. Of the translation before us, it is enough to say, that it is a faithful representation of the original."—*Law Magazine*.

"This translation, from its great merit, deserves a warm reception from all who desire to be acquainted with the history and elements of Roman law, or have its interests as a necessary part of a sound legal education at heart. With regard

to that great work, it is enough to say, that English writers have been continually in the habit of doing piecemeal what Messrs. Prichard and Nasmith have done wholesale. Hitherto we have had but gold dust from the mine; now we are fortunate in obtaining a large nugget. Mr. Nasmith is already known as the designer of a chart of the history of England, which has been generally approved, and bids fairly for extensive adoption."—*Law Journal*.



CLIFFORD & STEPHENS' REFEREES' PRACTICE, 1873.

THE PRACTICE OF THE COURT OF REFEREES on **PRIVATE BILLS IN PARLIAMENT**; with Reports of Cases as to the *Locus Standi* of Petitioners decided during the Sessions 1867–72. By **FREDERICK CLIFFORD**, of the Middle Temple, and **PEMBROKE S. STEPHENS**, of Lincoln's Inn, Esqs., Barristers-at-Law. 2 vols. royal 8vo. 3l. 10s. cloth.



In continuation of the above,

Royal 8vo., Vol. I. Part I., price 31s. 6d.; Vol. I. Part II., 15s.; Vol. II. Part I. 12s. 6d. sewed; and Vol. II. Part II. 12s. 6d. sewed.

CASES DECIDED DURING THE SESSIONS 1873, 1874, 1875, 1876, 1877 and 1878, by the **COURT OF REFEREES** on **PRIVATE BILLS** in **PARLIAMENT**. By **FREDERICK CLIFFORD** and **A. G. RICKARDS, Esqs.**, Barristers-at-Law.

"These Reports are a continuance of the series of 'Clifford and Stephens' Reports,' which began in 1867, and seem to be marked by the same care and accuracy which have made these Reports a standard for reference and quotation by practitioners and the Court itself."—*Times*.

"The book is really a very useful one, and will doubtless commend itself to Parliamentary practitioners."—*Law Times*.

"The Reports themselves are very well done. To parliamentary practitioners the work cannot fail to be of very great value."—*Solicitors' Journal*.

KELLY'S CONVEYANCING DRAFTSMAN.

THE DRAFTSMAN: containing a Collection of Concise Precedents and Forms in Conveyancing; with Introductory Observations and Practical Notes. By JAMES H. KELLY. Post 8vo. 6s. cloth.

"Mr. Kelly's object is to give a few precedents of each of these instruments which are most commonly required in a solicitor's office, and for which precedents are not always to be met with in the ordinary books on conveyancing. The idea is a good one, and the precedents contained in the book are, generally speaking, of the character contemplated by the author's design. We have been favourably impressed with a perusal of several of the precedents in this book, and practitioners who have already adopted forms of their

own will probably find it advantageous to collate them with those given by Mr. Kelly. Each set of precedents is prefaced by a few terse and practical observations."—*Solicitors' Journal*.

"Such statements of law and facts as are contained in the work are accurate."—*Law Journal*.

"It contains matter not found in the more ambitious works on conveyancing, and we venture to think that the student will find it a useful supplement to his reading on the subject of conveyancing."—*Law Examination Journal*.

LATHAM ON THE LAW OF WINDOW LIGHTS.

A TREATISE on the LAW of WINDOW LIGHTS. By FRANCIS LAW LATHAM, of the Inner Temple, Esq., Barrister-at-Law. Post 8vo. 10s. cloth.

"This is not merely a valuable addition to the law library of the practitioner, it is a book that every law student will read with profit. It exhausts the subject of which it treats."—*Law Times*.

"His arrangement is logical, and he discusses fully each point of his subject.

The work in our opinion is both perspicuous and able, and we cannot but compliment the author on it."—*Law Journal*.

"A treatise on this subject was wanted, and Mr. Latham has succeeded in meeting that want."—*Athenaeum*.

REDMAN ON ARBITRATIONS AND AWARDS.

A CONCISE TREATISE on the LAW OF ARBITRATIONS and AWARDS; with an Appendix of Precedents and Statutes. By JOSEPH HAWORTH REDMAN, of the Middle Temple, Esq., Barrister-at-Law, Author of "A Treatise on the Law of Railway Companies as Carriers." 8vo. 12s. cloth.

"A singular feature in this work is, that it has no foot notes, and this is a decided recommendation. The arrangement is good, the style clear, and the work exhaustive. There is a useful appendix of precedents and statutes, and a very good index."—*Law Times*.

"This is likely to prove a useful book in practice. All the ordinary law on the subject is given shortly and in a convenient and accessible form, and the index is a good one. The book is of a portable size and moderate price, and contains a fairly complete appendix of precedents. It is likely enough that

it will meet a demand both in the profession and amongst lay arbitrators."—*Solicitors' Journal*.

"We have no doubt but that the work will be useful. The precedents of awards are clearly and concisely drawn. The arrangement of chapters is conveniently managed. The law is clearly stated, and, so far as we can judge, all the important cases bearing directly on the subject are given, while the index appears reasonably copious. These facts, combined with the smallness of the volume, ought to make the book a success."—*Law Journal*.

**ROUSE'S CONVEYANCER, with SUPPLEMENT, 1871.
Third Edition.**

The PRACTICAL CONVEYANCER, giving, in a mode combining facility of reference with general utility, upwards of Four Hundred Precedents of Conveyances, Mortgages and Leases, Settlements, and Miscellaneous Forms, with (not in previous Editions) the Law and numerous Outline Forms and Clauses of WILLS and Abstracts of Statutes affecting Real Property, Conveyancing Memoranda, &c. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister-at-Law, Author of "The Practical Man," &c. Third Edition, greatly enlarged. With a Supplement, giving Abstracts of the Statutory Provisions affecting the Practice in Conveyancing, to the end of 1870; and the requisite Alterations in Forms, with some new Forms; and including a full Abstract in numbered Clauses of the Stamp Act, 1870. 2 vols. 8vo. 30s. cloth; 38s. calf.

* * * *The Supplement may be had separately, price 1s. 6d. sewed.*

"The best test of the value of a book written professedly for practical men is the practical one of the number of editions through which it passes. The fact that this well-known work has now reached its third shows that it is considered by those for whose convenience it was written to fulfil its purpose well."

—*Law Magazine.*

"This is the third edition in ten years, a proof that practitioners have used and approved the precedents collected by Mr. Rouse. In this edition, which is greatly enlarged, he has for the first time introduced Precedents of Wills, extending to no less than 116 pages. We can accord unmingled praise to the conveyancing memoranda showing the practical effect of the various statutory provisions in the different parts of a deed. If the two preceding editions have been so well received, the welcome given to this one by the profession will be heartier still."—*Law Times.*

"So far as a careful perusal of Mr. Rouse's book enables us to judge of its merits, we think that as a collection of precedents of general utility in cases of common occurrence it will be found satisfactorily to stand the application of the test. The draftsman will find in the Practical Conveyancer precedents appropriate to all instruments of common occurrence, and the collection appears to be especially well supplied with those which relate to copyhold estates. In order to avoid useless repetition and

also to make the precedents as simple as possible, Mr. Rouse has sketched out a number of outline drafts so as to present to the reader a sort of bird's-eye view of each instrument and show him its form at a glance. Each paragraph in these outline forms refers, by distinguishing letters and numbers, to the clauses in full required to be inserted in the respective parts of the instrument, and which are given in a subsequent part of the work, and thus every precedent in outline is made of itself an index to the clauses which are necessary to complete the draft. In order still further to simplify the arrangement of the work, the author has adopted a plan (which seems to us fully to answer its purpose) of giving the variations which may occur in any instrument according to the natural order of its different parts."—*Law Journal.*

"That the work has found favor is proved by the fact of our now having to review a third edition. This method of skeleton precedents appears to us to be attended with important advantages. Space is of course saved, but besides this there is the still more important consideration that the draftsman is materially assisted to a bird's-eye view of his draft. Everyone who has done much conveyancing work knows how thoroughly important, nay, how essential to success, is the formation of a clear idea of the scope and framework of the instrument to be produced. To

Rouse's Conveyancer—continued.

clerks and other young hands a course of conveyancing under Mr. Rouse's auspices is, we think, calculated to prove very instructive. To the solicitor, especially the country practitioner, who has often to set his clerks to work upon drafts of no particular difficulty to the experienced practitioner, but upon which they the said clerks are not to be

quite trusted alone, we think to such gentlemen Mr. Rouse's collection of Precedents is calculated to prove extremely serviceable. We repeat, in conclusion, that solicitors, especially those practising in the country, will find this a useful work."—*Solicitors' Journal*.

SAUNDERS' LAW OF NEGLIGENCE.

A TREATISE on the LAW applicable to NEGLIGENCE.

By THOMAS W. SAUNDERS, Esq., Barrister-at-Law, Recorder of Bath. 1 vol. post 8vo. 9s. cloth.

"The book is admirable; while small in bulk, it contains everything that is necessary, and its arrangement is such that one can readily refer to it. Amongst those those who have done a good service Mr. Saunders will find a place."—*Law Magazine*.

"We find very considerable diligence displayed. The references to the cases are given much more fully, and on a more rational system than is common with textbook writers. He has a good index."—*Solicitors' Journal*.

"The Recorder of Bath has rendered good service to the profession, and to the more intelligent section of the general public, by the production of the carefully prepared and practically useful volume now under notice. As a work of reference, the book will be very wel-

come in the office of the solicitor or in the chambers of the barrister."—*Morning Advertiser*.

"Mr. T. W. Saunders is well known as a large contributor to legal literature, and all his works are distinguished by painstaking and accuracy. This one is no exception, and the subject, which is of very extensive interest, will ensure for it a cordial welcome from the profession."—*Law Times*.

"As scarcely a day passes in which claims are not made, and actions brought, for compensations for injuries from neglect of some kind, a short and clear treatise like the present on the Law relating to the subject ought to be welcomed. It is a moderate size volume, and makes references to all the authorities on the question easy."—*Standard*.

DIXON'S LAW OF PARTNERSHIP.

A TREATISE ON THE LAW OF PARTNERSHIP.

By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister-at-Law, Editor of "Lush's Common Law Practice." 1 vol. 8vo. 22s. cloth.

"He has evidently bestowed upon this book the same conscientious labour and painstaking industry for which we had to compliment him some months since, when reviewing his edition of 'Lush's Practice of the Superior Courts of Law,' and, as a result, he has produced a clearly written and well arranged manual upon one of the most important branches of our mercantile law."—*Law Journal*.

"Mr. Dixon has done his work well. The book is carefully and usefully prepared."—*Solicitors' Journal*.

"We heartily recommend to practitioners and students Mr. Dixon's treatise as the best exposition of the law we

have read, for the arrangement is not only artistic, but conciseness has been studied without sacrifice of clearness."—*Law Times*.

"Mr. Lindley's view of the subject is that of a philosophical lawyer. Mr. Dixon's is purely and exclusively practical from beginning to end. We imagine that very few questions are likely to come before the practitioner which Mr. Dixon's book will not be found to solve. We have only to add, that the value of the book is very materially increased by an excellent marginal summary and a very copious index."—*Law Magazine and Review*.

MICHAEL & WILL'S GAS AND WATER SUPPLY.
Second Edition.

THE LAW RELATING TO GAS AND WATER: comprising the Rights and Duties, as well of Local Authorities as of Private Companies in regard thereto, and including all Legislation to the close of the last Session of Parliament. Second Edition. By W. H. MICHAEL and J. SHIRESS WILL, of the Middle Temple, Esqs., Barristers-at-Law. Demy 8vo. 25s. cloth.

"The Law of Gas and Water, by Messrs. Michael and Will, has reached a second edition, and the authors tell us that they have not only brought the law down to the present time but they have re-written a considerable portion of the text, particularly with reference to gas. When the first edition appeared we expressed an opinion that the work had been executed with care, skill and ability. This edition is a decided improvement on the first, and therefore we need add nothing now. It is a work which has probably found its way into the hands of all interested in the practical application of the Acts of Parlia-

ment relating to gas and water supply."
—*Law Times*.

"The collection of all the acts into one volume has long been required, but it was no light task, and therefore we were not surprised to find it not done sooner. Messrs. Michael and Will, who are barristers at law, were reserved for the work, and no one can truthfully say they have not acquitted themselves well. All the legislation to the close of the last session is included. The book is invaluable to any one interested in the supply of the two fluids, and this value is enhanced by an index for reference of nearly eighty pages."—*The Metropolitan*.



POWELL'S LAW OF INLAND CARRIERS.—
Second Edition.

THE LAW OF INLAND CARRIERS, especially as regulated by the Railway and Canal Traffic Act, 1854. By EDMUND POWELL, Esq., of Lincoln College, Oxon, M.A., and of the Western Circuit, Barrister-at-Law, Author of "Principles and Practice of the Law of Evidence." Second Edition, almost re-written. 8vo. 14s. cloth.

"The treatise before us states the law of which it treats ably and clearly, and contains a good index."—*Solicitors' Journal*.

"Mr. Powell's writing is singularly precise and condensed, without being at all dry, as those who have read his admirable Book of Evidence will attest. It will be seen, from our outline of the contents, how exhaustively the subject has been treated, and that it is entitled to be that which it aspires to become,

the text book on the Law of Carriers."
—*Law Times*.

"The subject of this treatise is not indeed a large one, but it has been got up by Mr. Powell with considerable care, and contains ample notice of the most recent cases and authorities."—*Jurist*.

"The two chapters on the Railway and Canal Traffic Act, 1856, are quite new, and the recent cases under the provisions of that statute are analyzed in lucid language."—*Law Magazine*.

PLUMPTRE ON THE LAW OF CONTRACTS.

A SUMMARY OF THE PRINCIPLES OF THE LAW OF SIMPLE CONTRACTS. By CLAUDE C. M. PLUMPTRE, of the Middle Temple, Esq., Barrister-at-Law. (Middle Temple Common Law Scholar, Hilary Term, 1877.) Post 8vo. 8s. cloth.

* * *A Companion Work to Underhill on Torts.*

"In our last volume we had occasion to mention with approbation two works by Mr. Arthur Underhill, *A Summary of the Law of Torts*, and a *Concise Manual of the Law relating to Trusts and Trustees*; the first of these had reached a second edition, and in its preparation the author of the present work was associated with Mr. Underhill. In the preparation of this book Mr. Plumptre has adopted the lines laid down by Mr. Underhill; by means of short rules and sub-rules he presents a summary of the leading principles relating to the law of simple contracts, with the decisions of the Courts by which they are illustrated. Part I. deals with the parties to a simple contract, and treats of those persons exempted from the performance of their contracts by reason of incapacity, such as infants, married women, lunatics, drunkards, convicts and bankrupts. Chapter II is devoted to contracts by corporations and by agents, and the following chapter to partners and partnerships generally.

"In Part II. we have the constituent parts of a simple contract, the consent of the parties, the consideration, the promise, contracts illegal at common law and by statute, and fraudulent contracts.

"Part III. gives rules for making a simple contract, and treats of contracts within the 4th and 15th sections of the Statute of Frauds; Statutes of Limitation; the discharge of the obligation imposed by the contract by performance; by mutual agreement; by accord and satisfaction; and by operation of law; oral evidence and written contracts; damages; and contracts made abroad.

"The book contains upwards of one hundred rules, all ably illustrated by cases, and a very full and well-compiled index facilitates reference. It is more particularly addressed to students, but practitioners of both branches of the legal profession will find it a useful and trustworthy guide."
—*Justice of the Peace.*

SMITH'S PRACTICE OF CONVEYANCING.

AN ELEMENTARY VIEW OF THE PRACTICE OF CONVEYANCING in SOLICITORS' OFFICES, with an Outline of the Proceedings under the Transfer of Land and Declaration of Title Acts, 1862, for the use of Articled Clerks. By EDMUND SMITH, B.A., late of Pembroke College, Cambridge, Attorney and Solicitor. Post 8vo. 6s. cloth.

DAVIS ON REGISTRATION.—Second Edition.

Just published, in 1 Vol., post 8vo., 12s. 6d. cloth.

THE LAW of REGISTRATION, PARLIAMENTARY, and MUNICIPAL, with all the STATUTES and CASES (including the Legislation of the present Session affecting the Franchise). By JAMES EDWARD DAVIS, Esq., Barrister-at-Law.

BARRY'S PRACTICE OF CONVEYANCING.

A TREATISE on the PRACTICE of CONVEYANCING. By W. WHITTAKER BARRY, Esq., of Lincoln's Inn, Barrister-at-Law, late holder of the Studentship of the Inns of Court, and Author of "The Statutory Jurisdiction of the Court of Chancery." 8vo. 18s. cloth.

"This treatise supplies a want which has long been felt. Mr. Barry's work is essentially what it professes to be, a treatise on the practice of conveyancing, in which the theoretical rules of real property law are referred to only for the purpose of elucidating the practice. The treatise is the production of a person of great merit and still greater promise."—*Solicitors' Journal*.

"We feel bound to strongly recommend it to the practitioner as well as the student. The author has proved himself to be a master of the subject, for he not only gives a most valuable supply of practical suggestions, but criticises them with much ability, and we have no doubt that his criticism will

meet with general approval."—*Law Magazine*.

"Readers who recal the instruction they gathered from this treatise when published week by week in the pages of the 'Law Times' will be pleased to learn that it has been re-produced in a handsome volume, which will be a welcome addition to the law library. The information that the treatise so much admired may now be had in the more convenient form of a book will suffice of itself to secure a large and eager demand for it."—*Law Times*.

"The work is clearly and agreeably written, and ably elucidates the subject in hand."—*Justice of the Peace*.

BARRY'S FORMS IN CONVEYANCING.

FORMS and PRECEDENTS in CONVEYANCING; with Introduction and Practical Notes. By W. WHITTAKER BARRY, of Lincoln's Inn, Barrister-at-Law, Author of a "Treatise on the Practice of Conveyancing." 8vo. 21s. cloth.

HERTSLET'S TREATIES.

HERTSLET'S TREATIES of Commerce, Navigation, Slave Trade, Post Office Communications, Copyright, &c., at present subsisting between Great Britain and Foreign Powers. Compiled from Authentic Documents by EDWARD HERTSLET, Esq., C.B., Librarian and Keeper of the Papers of the Foreign Office. 13 Vols. 8vo. 16l. 7s.

* Vol. I. price 12s., Vol. II. price 12s., Vol. III. price 18s., Vol. IV. price 18s., Vol. V. price 20s., Vol. VI. price 25s., Vol. VII. price 30s., Vol. VIII. price 30s., Vol. IX. price 30s., Vol. X. price 30s., Vol. XI. price 30s., Vol. XII. price 40s., Vol. XIII. price 42s. cloth, may be had separately to complete sets. Vol. XII. includes an Index of Subjects to the Twelve published Volumes, which Index is also sold separately, price 10s. cloth.

HERTSLET'S TREATIES ON TRADE AND TARIFFS.

TREATIES AND TARIFFS regulating the Trade between Great Britain and Foreign Nations, and extracts of the Treaties between Foreign Powers, containing "Most Favoured Nation" Clauses applicable to Great Britain in force on the 1st January, 1875. By EDWARD HERTSLET, Esq., C.B., Librarian and Keeper of the Papers, Foreign Office. Part I. (Austria). Royal 8vo. 7s. 6d. cloth. Part II. (Turkey). 15s. cloth. Part III. (Italy). 15s. cloth. Part IV. (China). 10s. cloth. Part V. (Spain). 1l. 1s. cloth. Part IV. (Japan). 15s. cloth.

HIGGINS'S DIGEST OF PATENT CASES.

A DIGEST of the REPORTED CASES relating to the Law and Practice of LETTERS PATENT for INVENTIONS, decided from the passing of the Statute of Monopolies to the present time. By CLEMENT HIGGINS, M.A., F.C.S., of the Inner Temple, Barrister-at-Law. 8vo, 21s. cloth; 25s. calf.

"Mr. Higgins's work will be useful as a work of reference. Upwards of 700 cases are digested; and, besides a table of contents, there is a full index to the subject matter; and that index, which greatly enhances the value of the book, must have cost the author much time, labour and thought."—*Law Journal*.

"This is essentially," says Mr. Higgins in his preface, "a book of reference." It remains to be added whether the compilation is reliable and exhaustive. It is only fair to say that we think it is; and we will add, that the arrangement of subject matter (chronological under each heading, the date, and double or even treble references being appended to every decision), and the neat and carefully executed index (which is decidedly above the average) are such as no reader of 'essentially a book of reference' could quarrel with."—*Scholar's Journal*.

"Mr. Higgins has, with wonderful and accurate research, produced a work which is much needed, since we have no collection of patent cases which does not terminate years ago. The work is well arranged, and gives brief, though comprehensive, statements of the various cases decided."—*Scientific and Literary Review*.

"The very elaborate Digest just completed by Mr. Higgins is worthy of being recognized by the profession as a thoroughly useful book of reference upon

the subject. Mr. Higgins's object has been to supply a reliable and exhaustive summary of the reported patent cases decided in English courts of law and equity, and this object he appears to have attained."—*Mining Journal*.

"We consider that Mr. Higgins, in the production of this work, has met a long-felt demand. Not merely the legal profession and patent agents, but patentees, actual or intending inventors, manufacturers and their scientific advisers, will find the Digest an invaluable book of reference."—*Chemical News*.

"The arrangement and condensation of the main principles and facts of the cases here digested render the work invaluable in the way of reference."—*Standard*.

"The work constitutes a step in the right direction, and is likely to prove of much service as a guide, a by no means immaterial point in its favour being that it includes a number of comparatively recent cases."—*Engineer*.

"In fine, we must pronounce the book as invaluable to all whom it may concern."—*Geological Journal of Science*.

"On the whole, Mr. Higgins's work has been well accomplished. It has ably fulfilled its object, by supplying a reliable and authentic summary of the reported Patent Law Cases decided in English Courts of Law and Equity."—*Irish Law Times*.

DOWELL'S INCOME TAX LAWS.

THE INCOME TAX LAWS at present in force in the United Kingdom, with practical Notes, Appendices and a copious Index. By STEPHEN DOWELL, M.A., of Lincoln's Inn, Assistant Solicitor of Inland Revenue. 8vo, 12s. 6d. cloth.

"To commissioners and all concerned in the working of the Income Tax Mr. Dowell's book will be of great value."—*Law Journal*.

"For practical purposes the compilation must prove very useful."—*Law Times*.

"We can honestly commend Mr. Dowell's work to our readers as being

well done in every respect."—*Law Magazine*.

"Mr. Dowell's official position eminently fits him for the work he has undertaken, and his history of the Stamp Laws shows how carefully and conscientiously he performs what he undertakes."—*Justice of the Peace*.

INGRAM'S LAW OF COMPENSATION.—Second Edit.

COMPENSATION to LAND and HOUSE OWNERS: being a Treatise on the Law of the Compensation for Interests in Lands, &c. payable by Railway and other Public Companies; with an Appendix of Forms and Statutes. By THOMAS DUNBAR INGRAM, of Lincoln's Inn, Esq., Barrister-at-Law, now Professor of Jurisprudence and Indian Law in the Presidency College, Calcutta. Second Edition. By J. J. ELMES, of the Inner Temple, Esq., Barrister-at-Law. Post 8vo. 12s. cloth.

"Whether for companies taking land or holding it, Mr. Ingram's volume will be a welcome guide. With this in his hand the legal adviser of a company, or of an owner and occupier whose property is taken, and who demands compensation for it, cannot fail to perform his duty rightly."—*Law Times*.

"This work appears to be carefully prepared as regards its matter. This edition is a third larger than the first; it contains twice as many cases, and an enlarged index. It was much called for and doubtless will be found very useful by the practitioner."—*Law Magazine*.

"The appearance upon the title page of the words *Second Edition* attests in the most conclusive manner that Mr. Ingram has rightly measured the

requirements of the profession when he designed the monograph before us. The appendix contains no less than sixty forms required in the practice of this branch of the law and the statutes and parts of statutes in which it is embodied. The index is very ample. Thus it will be seen to be a book very valuable to all solicitors who may be concerned for railways or for the persons whose properties are affected by them."—*Law Times, second notice*.

"His explanations are clear and accurate, and he constantly endeavours not only to state the effect of the law which he is enunciating, but also to show the principle upon which it rests."—*Athenæum*.

SCRIVEN ON COPYHOLDS.—Fifth Edition by Stalman.

A TREATISE ON COPYHOLD, CUSTOMARY FREEHOLD, and ANCIENT DEMESNE TENURE, with the Jurisdiction of Courts Baron and Courts Leet. By JOHN SCRIVEN, Serjeant-at-Law. The Fifth Edition, containing References to Cases and Acts of Parliament to the present time. By HENRY STALMAN, Esq., of the Inner Temple, Barrister-at-Law. Abridged in 1 vol. royal 8vo. 30s. cloth.

TUDOR'S CHARITABLE TRUSTS.—Second Edition.

THE LAW OF CHARITABLE TRUSTS; with the Statutes, including those to 1869, the Orders, Regulations and Instructions issued pursuant thereto, and a Selection of Schemes, with Notes. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law, Author of "*Leading Cases in Equity*." Second Edition, containing all the recent Statutes and Decisions. Post 8vo. 18s. cloth.

"No living writer is more capable than Mr. Tudor of producing such a work: his *Leading Cases in Equity*, and also on the Law of Real Property, have deservedly earned for him the highest reputation as a learned, careful and judicious text-writer. The main

feature of the work is the manner in which Mr. Tudor has dealt with all the recent statutes relating to this subject."—*Solicitors' Journal*.

"Mr. Tudor's excellent little book on Charitable Trusts."—*Law Times*.

FORBES ON SAVINGS BANKS.

THE LAW RELATING TO TRUSTEE AND POST OFFICE SAVINGS BANKS, with Notes of Decisions and Awards made by the Barrister and Registrar of Friendly Societies. By URBINHART A. FORBES, of Lincoln's Inn, Esq., Barrister-at-Law. 1 vol., 12mo., 7s. 6d. cloth.

SHELFORD'S SUCCESSION, PROBATE AND LEGACY DUTIES.—Second Edition.

THE LAW relating to the PROBATE, LEGACY and SUCCESSION DUTIES in ENGLAND, IRELAND and SCOTLAND, including all the Statutes and the Decisions on those Subjects: with Forms and Official Regulations. By LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. The Second Edition, with many Alterations and Additions. 12mo. 16s. cloth.

"The treatise before us, one of the most useful and popular of his productions, being now the text book on the subject, nothing remains but to make known its appearance to our readers.

Its merits have been already tested by most of them." *Law Times.*

"Mr. Shelford's book appears to us to be the best and most complete work on this extremely intricate subject."—*Law Magazine.*

DAVIS'S CRIMINAL LAW CONSOLIDATION ACTS.

THE CRIMINAL LAW CONSOLIDATION ACTS, 1861: with an Introduction and practical Notes, illustrated by a copious reference to Cases decided by the Court of Criminal Appeal. Together with Alphabetical Tables of Offences, as well those punishable upon Summary Conviction as upon Indictment, and including the Offences under the New Bankruptcy Act, so arranged as to present at one view the particular Offence, the old or new Statute upon which it is founded, and the Limits of Punishment; and a full Index. By JAMES EDWARD DAVIS, Esq., Barrister-at-Law. 12mo. 10s. cloth.

BAYLIS'S LAW OF DOMESTIC SERVANTS.

By Monckton. Fourth Edition.

THE RIGHTS, DUTIES AND RELATIONS OF DOMESTIC SERVANTS AND THEIR MASTERS AND MISTRESSES. With a short Account of Servants' Institutions, &c., and their Advantages. By T. HENRY BAYLIS, M.A., Barrister-at-Law, of the Inner Temple. Fourth Edition, with considerable Additions, by EDWARD P. MONCKTON, Esq., B.A., Barrister-at-Law, of the Inner Temple. Foolscap 8vo. 2s. cloth.

SEABORNE'S LAW OF VENDORS & PURCHASERS.

A CONCISE MANUAL of the LAW of VENDORS and PURCHASERS of REAL PROPERTY; with a Supplement, including the Vendor and Purchaser Act, 1874, with Notes. 2nd Edition. By HENRY SEABORNE. Post 8vo. 10s. 6d. cloth.

* * * *This work is designed to furnish Practitioners with an easy means of reference to the Statutory Enactments and Judicial Decisions regulating the Transfer of Real Property, and also to bring these authorities in a compendious shape under the attention of Students.*

"The book before us contains a good deal, especially of practical information as to the course of conveyancing matters in solicitors' offices, which may be useful to students."—*Solicitors' Journal*.

"We will do Mr. Seaborne the justice to say that we believe his work will be of some use to articulated and other clerks in solicitors' offices, who have not the opportunity or inclination to refer to the standard works from which his is compiled."—*Law Journal*.

"The value of Mr. Seaborne's book consists in its being the most concise summary ever yet published of one of

the most important branches of the law. The student will find this book a useful introduction to a dry and difficult subject."—*Law Examination Journal*.

"Intended to furnish a ready means of access to the enactments and decisions governing that branch of the law."—*The Times*.

"The book will be found of use to the legal practitioner, inasmuch as it will, so far as regards established points of law, be a handier work of reference than the longer treatises we have named."—*Athenæum*.

TOMKINS' INSTITUTES OF ROMAN LAW.

THE INSTITUTES OF ROMAN LAW. Part I., containing the Sources of the Roman Law and its External History till the Decline of the Eastern and Western Empires. By FREDERICK TOMKINS, M.A., D.C.L., Barrister-at-Law, of Lincoln's Inn. Roy. 8vo. 12s. cloth. (To be completed in 3 Parts.)

DREWRY'S EQUITY PLEADER.

A CONCISE TREATISE on the Principles of EQUITY PLEADING, with Precedents. By C. STEWART DREWRY, Esq., of the Inner Temple, Barrister-at-Law. 12mo. 6s. boards.

GAIUS' ROMAN LAW.—By Tomkins and Lemon.

(Indicated by permission to Lord Chancellor Hatherley.)

THE COMMENTARIES of GAIUS on the ROMAN LAW: with an English Translation and Annotations. By FREDERICK J. TOMKINS, Esq., M.A., D.C.L., and WILLIAM GEORGE LEMON, Esq., LL.B., Barristers-at-Law, of Lincoln's Inn. 8vo. 27s. extra cloth.

"We feel bound to speak in the highest terms of the manner in which Mr. Tomkins and Mr. Lemon have executed their task. We unhesitatingly recommend its careful perusal to all students of Roman Law."—*Law Magazine*.

"The authors have done a good service to the study of Roman Law, and deserve the thanks of those who take an

interest in legal literature."—*Solicitors' Journal*.

"The translation is carefully executed and the annotations show extensive knowledge of the Roman Law."—*Athenæum*.

"One of the most valuable contributions from an English source to our legal literature which the last half-century has witnessed."—*Edinburgh Evening Courant*.

FIELD'S REGULATIONS OF THE BENGAL CODE.

THE REGULATIONS OF THE BENGAL CODE, Edited, with Chronological Tables of Repeal and Amendment, and an Introduction. By C. D. FIELD, of the Inner Temple, Barrister-at-Law, and of H.M.'s Bengal Civil Service. 1 vol. royal 8vo. 42s. cloth.



FIELD'S TABLE OF, AND INDEX TO, INDIAN STATUTES.

CHRONOLOGICAL TABLE OF, AND INDEX TO, THE INDIAN STATUTE BOOK for the Year 1834; with a General Introduction to the Statute Law of India. With *Supplement* continuing the work to August, 1872. By C. D. FIELD, M.A., LL.D., of the Inner Temple, Barrister-at-Law, and of H.M.'s Bengal Civil Service. Imperial 4to. 42s. cloth.



BRANDON'S LAW OF FOREIGN ATTACHMENT.

A TREATISE upon the CUSTOMARY LAW of FOREIGN ATTACHMENT, and the PRACTICE of the MAYOR'S COURT of the CITY OF LONDON therein. With Forms of Procedure. By WOODTHORPE BRANDON, Esq., of the Middle Temple, Barrister-at-Law. 8vo. 11s. cloth.



MOSELEY ON CONTRABAND OF WAR.

WHAT IS CONTRABAND OF WAR AND WHAT IS NOT. A Treatise comprising all the American and English Authorities on the Subject. By JOSEPH MOSELEY, Esq., B.C.L., Barrister-at-Law. Post 8vo. 5s. cloth.



SMITH'S BAR EDUCATION.

A HISTORY of EDUCATION for the ENGLISH BAR, with SUGGESTIONS as to SUBJECTS and METHODS of STUDY. By PHILIP ANSTIE SMITH, Esq., M.A., LL.B., Barrister-at-Law. 8vo. 9s. cloth.



WILLS ON EVIDENCE.—Fourth Edition.

AN ESSAY on the PRINCIPLES of CIRCUMSTANTIAL EVIDENCE. Illustrated by numerous Cases. By the late WILLIAM WILLS, Esq. Fourth Edition. Edited by his Son, ALFRED WILLS, Esq., Barrister-at-Law. 8vo. 10s. cloth.

ROUSE'S COPYHOLD ENFRANCHISEMENT MANUAL.—Third Edition.

The COPYHOLD ENFRANCHISEMENT MANUAL; enlarged, and treating the subject in the Legal, Practical and Mathematical Points of View; giving numerous Forms, Rules, Tables and Instructions for Calculating the Values of the Lord's Rights; Suggestions to Lords' Stewards, and Copyholders, protective of their several Interests, and to Valuers in performance of their Duties; and including the Act of 1858, and Proceedings in Enfranchisement under it. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister-at-Law. Third Edition, much enlarged. 12mo. 10s. 6d. cloth.

"This new edition follows the plan of its predecessor, adopting a fivefold division:—1. The Law. 2. The Practice, with Practical Suggestions to Lords' Stewards and Copyholders. 3. The Mathematical consideration of the Subject in all its Details, with Rules, Tables and Examples. 4. Forms. 5. The Statutes, with Notes. Of these, we can only repeat what we have said before, that they exhaust the subject; they give to the practitioner all the materials required by him to conduct the enfranchisement of a copyhold, whether voluntary or compulsory."—*Law Times*.

"When we consider what favour Mr. Rouse's Practical Man and Practical Conveyancer have found with the pro-

fession, we feel sure the legal world will greet with pleasure a new and improved edition of his Copyhold Manual. The third edition of that work is before us. It is a work of great practical value, suitable to lawyers and laymen. We can freely and heartily recommend this volume to the practitioner, the steward and the copyholder."—*Law Magazine*.

"Now, however, that copyhold tenures are being frequently converted into freeholds, Mr. Rouse's treatise will doubtless be productive of very extensive benefit; for it seems to us to have been very carefully prepared, exceedingly well composed and written, and to indicate much experience in copyhold law on the part of the author."—*Solicitors' Journal*.

HEALES'S HISTORY AND LAW OF PEWS.

THE HISTORY and the LAW of CHURCH SEATS or PEWS. By ALFRED HEALES, F.S.A., Proctor in Doctors' Commons. 2 vols. 8vo. 16s. cloth.

"Altogether we can commend Mr. Heales's book as a well conceived and well executed work, which is evidence

of the author's industry, talent and learning."—*Law Journal*.

BRABROOK'S WORK ON CO-OPERATION.

THE LAW and PRACTICE of CO-OPERATIVE or INDUSTRIAL and PROVIDENT SOCIETIES; including the Winding-up Clauses, to which are added the Law of France on the same subject, and Remarks on Trades Unions. By EDWARD W. BRABROOK, F.S.A., of Lincoln's Inn, Esq., Barrister-at-Law, Assistant-Registrar of Friendly Societies in England. 6s. cloth.

LUSHINGTON'S NAVAL PRIZE LAW.

A MANUAL of NAVAL PRIZE LAW. By GODFREY LUSHINGTON, of the Inner Temple, Esq., Barrister-at-Law. Royal 8vo. 10s. 6d. cloth.

WIGRAM ON WILLS. Fourth Edition.

AN EXAMINATION OF THE RULES OF LAW respecting the Admission of **EXTRINSIC EVIDENCE** in Aid of the **INTERPRETATION OF WILLS.** By the Right Hon. Sir **JAMES WIGRAM, Knt.** The Fourth Edition, prepared for the press, with the sanction of the learned Author, by **W. KNOX WIGRAM, M.A.,** of Lincoln's Inn, Esq., Barrister-at-Law. Svo. 11s. cloth.

"In the celebrated treatise of Sir James Wigram, the rules of law are stated, discussed and explained in a manner which has excited the admiration of every judge who has had to consult it."—*Lord Kingsdown, in a Privy Council Judgment, July 8th, 1858.*

"There can be no doubt that the notes of Mr. Knox Wigram have enhanced the value of the work, as affording a ready reference to recent cases on the subjects embraced or arising out of Sir James Wigram's propositions, and

which frequently give additional support, and in some instances an extension to the original text."—*Law Chronicle.*

"Understood as general guides, the propositions established by Sir James Wigram's book are of the highest value. But whatever view may be entertained, the book is one which will always be highly prized, and is now presented in a very satisfactory shape, thanks to the industry and intelligence displayed in the notes by the present editor."—*Solicitors' Journal and Reporter.*

COOMBS' SOLICITORS' BOOKKEEPING.

A MANUAL OF SOLICITORS' BOOKKEEPING: comprising practical exemplifications of a concise and simple plan of Double Entry, with Forms of Account and other Books relating to Bills of Costs, Cash, &c., showing their operation, giving directions for keeping, posting and balancing them, and instructions for drawing costs. Adapted for a large or small, sole or partnership business. By **W. B. COOMBS, Law Accountant and Costs Draftsman.** 1 vol. Svo. 10s. 6d. cloth.

*.° *The various Account Books described in the above work, the form of which are copyright, may be had from the Publishers, at the prices stated in the work at page 271.*

"The author of the above, relying on the well-known fact that solicitors do not like intricate bookkeeping, has presented to that branch of the profession a work in which the really superfluous has been omitted, and that only which is necessary and useful in the ordinary routine in an attorney's office has been retained. He has performed his task in a masterly manner, and in doing so has given the why and the wherefore of the whole system of Solicitors' Bookkeeping. The volume is the most comprehensive we remember to have seen on the subject, and from the clear and intelligible manner in which the whole has been worked out it will render it unexceptionable in the hands of the student and the practitioner."—*Law Magazine.*

"Throughout the *practical account* books most of the different matters of business which usually arise in a solicitor's office have been passed from their

commencement to their ultimate conclusion. The book contains precedents of bills of costs illustrating the correspondence between that and the disbursement book, and so with the cash book, ledger and other books; every item has its reference, and any intricate points have been explained, which are merits which no other work on the subject possesses; indeed so clear are the instructions appended, that a tyro of average skill and abilities with application and, under ordinary circumstances, can open and keep the accounts of a business; and so far as we can judge the author has succeeded in his endeavour to divest solicitors' bookkeeping of complexity, and to become simple and without being inefficient. We cannot dismiss this volume without briefly commending upon the excellent style in which it is submitted to the profession."—*Law Journal.*

LAWRENCE'S PARTITION ACTS, 1868 and 1876.

THE COMPULSORY SALE OF REAL ESTATE under the **POWERS** of the **PARTITION ACT, 1868**, as Amended by the **Partition Act, 1876**. By **PHILIP HENRY LAWRENCE**, of **Lincoln's Inn, Esq., Barrister-at-Law**. 8vo. 8s. cloth.

"In this volume Mr. Lawrence treats of a variety of important questions connected with the compulsory sale of real estate under the Partition Act, 1876. The author has done his work very fairly. We may remark of the type that it is particularly clear and legible."—*Law Journal*.

"Mr. Lawrence is evidently acquainted with his subject. He explains the state of the law previous to the

Statute of 1868, and the means by which under it persons may now maintain a suit. On the sale of land the whole subject is ably treated, and the book contains, amongst other things, a valuable selection of leading cases on the subject."—*Justice of the Peace*.

"The book is written in a clear and perspicuous style, and will well repay perusal."—*Law Examination Journal*.

HUNT'S BOUNDARIES, FENCES & FORESHORES.—Second Edition.

A TREATISE on the **LAW** relating to **BOUNDARIES** and **FENCES**, and to the **Rights of Property** on the **Sea Shore** and in the **Beds of Public Rivers** and other **Waters**. **Second Edition**. By **ARTHUR JOSEPH HUNT**, of the **Inner Temple, Esq., Barrister-at-Law**. 12mo. 12s. cloth.

"There are few more fertile sources of litigation than those dealt with in Mr. Hunt's valuable book. It is sufficient here to say that the volume ought to have a larger circulation than ordinarily belongs to law books, that it ought to be found in every country gentleman's library, that the cases are brought down to the latest date, and that it is carefully prepared, clearly written and well edited."—*Law Magazine*.

"It speaks well for this book, that it has so soon passed into a second edition. That its utility has been appreciated is shown by its success. Mr. Hunt has availed himself of the opportunity of a second edition to note up all the cases to this time, and to extend considerably some of the chapters, especially that which treats of rights of property on

the seashore and the subjects of sea walls and commissions of sewers."—*Law Times*.

"Mr. Hunt chose a good subject for a separate treatise on Boundaries and Fences and Rights to the Seashore, and we are not surprised to find that a second edition of his book has been called for. The present edition contains much new matter. The chapter especially which treats on rights of property on the seashore, which has been greatly extended. Additions have been also made to the chapters relating to the fencing of the property of mine owners and railway companies. All the cases which have been decided since the work first appeared have been introduced in their proper places. Thus it will be seen this new edition has a considerably enhanced value."—*Solicitors' Journal*.

GRANT'S LAW OF CORPORATIONS IN GENERAL.

A PRACTICAL TREATISE ON THE LAW OF CORPORATIONS IN GENERAL, as well **Aggregate** as **Sole**; including **Municipal Corporations**, **Railway**, **Banking**, **Canal** and other **Joint-Stock** and **Trading Bodies**, **Dean and Chapters**, **Universities**, **Colleges**, **Schools**, **Hospitals**, with *quasi* **Corporations** aggregate, as **Guardians of the Poor**, **Churchwardens**, **Churchwardens and Overseers**, &c., and also **Corporations sole**, as **Bishops**, **Deans**, **Canons**, **Archdeacons**, **Parsons**, &c. By **JAMES GRANT, Esq.**, of the **Middle Temple, Barrister-at-Law**. Royal 8vo. 26s. boards.

BUND'S LAW OF SALMON FISHERIES.

THE LAW relating to the SALMON FISHERIES of ENGLAND and WALES, as amended by "The Salmon Fishery Act, 1873;" with the Statutes and Cases. By J. W. WILLIS BUND, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law, Vice-Chairman Severn Fishery Board. Post 8vo, 15s. cloth.

From the Thirteenth Annual Report of Inspector Buckland on Salmon Fisheries, 1874.
 "I would wish in this place to express my approval of 'Bund's Law of Salmon Fisheries in England and Wales, with Statutes and Cases.' This work will afford great assistance to those engaged in administering the law, while it affords valuable information on the theory and practice of Salmon legislation in general."

From the Thirteenth Annual Report of Inspector Walpole on Salmon Fisheries, 1874.
 "Mr. Willis Bund, the Draftsman of the new Act, has published an important treatise on the whole of the Salmon Fishery Acts, which has already been accepted as a complete exposition of those Statutes."

"Doubtless all the law will be found between his covers, and we have not been able to detect any erroneous statements. We can recommend the book as a disquisition it is conscientiously executed."—*Law Times*.

"With Mr. Bund's work at his elbow, the inquirer will find it tolerably easy work, for Mr. Bund has with great skill and labour done all the most troublesome work for him, and each point of law is marked out so that there can be no difficulty in understanding it, for not only are the points unravelled and discussed, but the cases which have come before the superior courts upon the

various points are distinctly set forth, and the decision upon each made plain. Mr. Bund has done the work excellently well, and nothing further in this way can be desired."—*The Field*.

"We have always found his opinion sound, and his explanations clear and lucid. This volume must of necessity become a handbook to salmon fishers in general, and especially to boards of conservators, who will thereby be much assisted in the formation of the new boards of conservators, under the Act of 1873; also the operation of the Acts of 1864 and 1865, as amended by the Act of 1873."—*Land and Water*.

TROWER'S CHURCH BUILDING LAWS, Continued to 1874.

THE LAW of the BUILDING of CHURCHES, PARSONAGES, and SCHOOLS, and of the Division of Parishes and Places. By CHARLES FRANCIS TROWER, M.A., of the Inner Temple, Esq., Barrister-at-Law, late Fellow of Exeter College, Oxford, and late Secretary of Presentations to Lord Chancellor Westbury. Post 8vo, 9s. cloth.

The Supplement may be had separately, price 1s. sewed.

"A good book on this subject is calculated to be of considerable service both to lawyers, clerics and laymen; and on the whole, after taking a survey of the work before us, we may pronounce it a useful work. It contains a great mass of information of essential import to those who as parishioners, legal ad-

visers or clergymen are concerned with glebes, endowments, district chapels, parishes, ecclesiastical commissions, and such like matters, about which the public and notably the clerical public seem to know but little, but which it is needless to say are matters of much importance."—*Solicitors' Journal*.

COLLIER'S LAW OF CONTRIBUTORIES.

A TREATISE on the LAW OF CONTRIBUTORIES in the Winding-up of Joint-Stock Companies. By ROBERT COLLIER, of the Inner Temple, Esq., Barrister-at-Law. Post 8vo. 9s. cloth.

"Mr. Collier's general arrangement appears to have been carefully devised, and is probably as neat as the nature of the subject admits of. It is impossible after a perusal of the book to doubt that the author has honestly studied the subject, and has not contented himself with the practice of piecing together head notes from reports."—*Solicitors' Journal*.

"Mr. Collier has not shrunk from pointing out his views as to the reconcilability of apparently conflicting decisions or as to many points on which the law is still unsettled; without making any quotations for the purpose of illustrating the above remarks, we think we are justified in commending this treatise to the favourable consideration of the profession."—*Law Journal*.

"Mr. Robert Collier's treatise on the subject deserves attention beyond the limits of his profession. The chapter showing the modes in which liability may be incurred is full of instructive warning."—*Saturday Review*.

"The perplexity of the laws relating to personal liability, naturally suggests a collection of precedents and cases which may be considered settled, and of direct application to the generality of cases; and this the author appears to have done with success, as far as we can judge of the merit of the work."—*Standard*.

"This is a valuable legal work, which should be in the hands of all speculators in the formation of new ventures in the shape of joint stock companies and

associations. It is important that such persons should know the exact position they assume, in a legal point of view, and this they will be enabled to do by a perusal of this work, written by a barrister of some repute."—*Bullionist*.

"This work he has done very thoroughly, and the scope of the treatise is far wider than the author has laid down in his preface. There is probably no branch of the law of contracts more difficult and intricate than this of contribution, and the cases quoted by Mr. Collier are treated with great discrimination, so that the book enables a man who has not made the subject a matter of special study to advise with comparatively small trouble to himself. This is the advantage of writers devoting themselves to what we may call the byways of the law—a dangerous track for the weakly, the infirm, or the unaccustomed, but light and easy enough with such a guide as Mr. Collier. Laymen may also learn from the work the exact liability which they incur before entering into contracts, and thus avoid the chance of ruin."—*Irish Law Times*.

"The work is clearly and vigorously written, and Mr. Collier has managed to put a great deal of information into a small space. The book will be found to be a useful addition to the list of treatises on a branch of the law which has grown immensely since 1862."—*Athenæum*.

"Mr. Collier has carried out his intention, and has produced a work of great utility."—*The Law*.

BULLEY & BUND'S NEW BANKRUPTCY MANUAL.

A MANUAL OF THE LAW AND PRACTICE OF BANKRUPTCY as Amended and Consolidated by the Statutes of 1869, with an APPENDIX containing the Statutes, Orders and Forms. By JOHN F. BULLEY, B.A., and J. W. WILLIS BUND, M.A., LL.B., Barristers-at-Law. 12mo. 16s. cloth. With a Supplement including the Orders to April, 1870.

* * * *The Supplement may be had separately, 1s. sewed.*

"This is a treatise, not an edition of the acts, and where the law is to a large extent new, this is the best, though the most troublesome, mode of dealing with

it. A very complete index makes the work all that the practitioner, be he barrister or solicitor, can require."—*Law Times*.

Magisterial Works by Mr. Oke

(LATE CHIEF CLERK TO THE LORD MAYOR OF LONDON).

Oke's Magisterial Synopsis: a Practical Guide for Magistrates, their Clerks, Solicitors, and Constables; comprising Summary Convictions and Indictable Offences, with their Penalties, Punishments, Procedure, &c.; alphabetically and tabularly arranged; with a Copious Index. Twelfth Edition, much enlarged. By THOMAS W. SAUNDERS, Esq., late Recorder of Bath, and now one of the Metropolitan Police Magistrates. In 2 vols. 8vo. 60s. cloth; 70s. calf.

"Twelve editions in twenty-eight years say more for the practical utility of this work than any number of favourable reviews. Yet we feel bound to accord to the learned Recorder of Bath the praise of having fully maintained in the present edition the well-earned reputation of this useful book. The many important statutes passed since the eleventh edition appeared, only four years since, and which either impose new duties upon or modify the old law administered by justices of the peace, have been carefully incorporated in the present work. Among these we may notice in the legislation of the last session alone the Acts concerning Cruelty to Animals, Drugging of Animals, Elementary Education, Industrial and Provident Societies, Merchant Shipping, the Poor Law, Salmon Fishing and Wild Fowl Protection. A copious index of over 100 pages offers every facility of reference which can be desired, in addition to the alphabetical and tabular arrangement of offences with their penalties, punishments, and procedure."—*Law Magazine*, February, 1877.

"All we can do in reviewing a new edition of a work, on the general plan of which the profession has justly conferred so distinguished a mark of approval as is involved in a twelfth edition, is to see whether the statutes and cases which have been passed and decided

within the four years which have elapsed since the last edition have been duly incorporated. They appear, on the points on which we have tested the book, to have been noticed by Mr. Saunders with considerable care. The index has been very greatly improved, and has become a valuable feature of the work."—*Solicitors' Journal*.

"The industrious, capable and painstaking Recorder of Bath (Mr. T. W. Saunders) has edited the twelfth edition of Oke's Magisterial Synopsis. The law administered by magistrates, like almost every other branch of our jurisprudence, goes on growing almost every day of the legal year, and a new edition of such a work as this every few years means no small amount of labour on the part of the editor. The array of statutes which have been passed during the last four years requiring the attention of justices is formidable enough, as appears by Mr. Saunders's preface. We are glad to see that Mr. Saunders has bestowed great care in the revision of the index, which is now a feature in the work."—*Law Times*.

"The first edition of this work was published in 1818, and contained 110 pages. The twelfth edition has now been published, and contains 1,579 pages. Both of these facts have their moral. The first proves how great a reward waits upon a genuine success in legal

[Mr. Oke's Works continued over.

Mr. Oke's Magisterial Works—*continued.*

literature: the second proves what immense labour is cast upon the author who endeavours to win the reward. We believe the issue of twelve editions of a large law book within the space of twenty-eight years to be without precedent in the history of legal literature, and we are quite sure that the result has in this case not at all exceeded the merit of the work. The new edition now before us has been brought out under the superintendence of Mr. Saunders, the Recorder of Bath, whose name is well known

in legal literature. Mr. Saunders has for many years made many of the subjects which fall within the scope of magisterial jurisdiction his special study, and we are not at all surprised that he should have been selected to carry on the work of Mr. Oke. A host of acts have been passed since 1872, and all these have been introduced into the work, and put in their proper places, so that they can be found, as wanted, by justices, justices' clerks and solicitors."—*Law Journal.*

Oke's Magisterial Formulist: being a Complete Collection of Forms and Precedents for practical use in all Cases out of Quarter Sessions, and in Parochial Matters, by Magistrates, their Clerks, Attornies and Constables. By GEORGE C. OKE, Author of "The Magisterial Synopsis," &c. *Fifth Edition*, enlarged and improved. By THOMAS W. SAUNDERS, Esq., late Recorder of Bath, and now one of the Metropolitan Police Magistrates. In 1 vol. 8vo. 38s. cloth; 43s. calf.

"The last edition of this very useful work was published in 1868. Since which time, in addition to numerous amending and consolidating acts bearing upon magistrates' law, other important statutes have come into effect. New forms, applicable to these and other acts, have been prepared with much care by the learned editor of the present edition (Mr. Saunders), while those which had become inapplicable have been eliminated. Besides the table of contents, a table of statutes, connected with the forms, has been added; a clear, unusually copious index leaves nothing to be desired by those who have to administer the branch of the law to which Oke's Magisterial Formulist relates."—*Law Magazine.*

"Mr. Saunders has not been called upon to perform the functions of an annotator merely. He has had to create, just as Mr. Oke created when he wrote his book. This, of course, has necessitated the enlargement and remodelling

of the index. No work probably is in more use in the offices of magistrates than 'Oke's Formulist.' That it should be reliable and comprehend recent enactments is of the very first importance. In selecting Mr. Saunders to follow in the steps of Mr. Oke the publishers exercised wise discretion, and we congratulate both author and publishers upon the complete and very excellent manner in which this edition has been prepared and is now presented to the profession."—*Law Times.*

"The duty of editing anew the 'Magisterial Formulist' has fallen upon the Recorder of Bath, whose experience and industry ought to furnish a guarantee that in his hands a work of so much value and celebrity will not lose any of its former attributes. Apart from the statutory forms, there is a daily and hourly need of forms pressing upon clerks to justices, and their time is too valuable to admit of the labour of drawing what is wanted on an

Mr. Oke's Magisterial Works—*continued.*

emergency. There is not a member of this most important and intelligent class of men who has not learned to look upon Oke's 'Formulist' as a trusty friend and safe guide in the moment of need, and who will not welcome an edition which embraces the novel matter required by fresh legislation. When we find that 900 pages are occupied with these forms, and that the index alone consists of 100 pages, we can form some idea of the task which Mr. Saunders has undertaken, the performance of which ought to add to his repute. Mr. Saunders has compiled a new table of statutes connected with the forms, an addition which will certainly be found useful."—*Law Journal*.

"This well-known work stands no longer in need of any introduction or recommendation: it is not so much the convenience as the necessity of every person who has to conduct or advise the conduct of a magistrate's business. To return, however, to the more proper function of the book before us, the question with any new edition of such a work as the present is,

whether it has been so kept abreast with legislative changes as to preserve its character of practical utility. Although all will join with the present editor in lamenting that the public can no longer command the services of the accurate and experienced author, yet we see no reason to think that they will suffer through the duty of re-editing this valuable collection of forms having devolved upon Mr. Saunders, who seems to have performed his task with the care and accuracy which he has accustomed us to expect from him. His labour has not been a light one, for, as he points out, recent legislation has not only added to the already wide field of magisterial duties, but has also, by the process of consolidation, as well as by considerable substantive alterations, varied the necessary forms. These changes have been duly followed, and the work, which was last edited in 1868, may now be relied upon as a safe and complete guide in the matter it relates to."—*Solicitors' Journal*.

Oke's Laws as to Licensing Inns, &c. Second Edit. 1874; containing the Licensing Acts, 1872 and 1874, and the other Acts in force as to Ale-houses, Beer-houses, Wine and Refreshment-houses, Shops, &c., where Intoxicating Liquors are sold, and Billiard and Occasional Licences. Systematically arranged, with Explanatory Notes, the authorized Forms of Licences, Tables of Offences, Index, &c. By GEORGE C. OKE, late Chief Clerk to the Lord Mayor of London. Second Edition, by W. C. GLEN, Esq., Barrister-at-Law. Post 8vo. 10s. cloth.

"It is superfluous to recommend any work on magisterial law which bears the name of Mr. George C. Oke on the title page. This treatise, which Mr. Oke modestly describes as little, is a comprehensive manual. The law is cited in a manner easy of reference."—*Law Journal*.

"The arrangement in chapters by Mr. Oke seems to us better than

the plan pursued by the authors of the rival work; and we think that Mr. Glen has done well to leave in many cases a concise statement of the effect of the legislation repealed by the late act. He also gives a useful list of places beyond the metropolitan district and in the police district."—*Solicitors' Journal*.

Mr. Oke's Magisterial Works—continued.

Oke's Handy Book of the Game Laws ; containing the whole Law as to Game, Licences and Certificates, Gun Licences, Poaching Prevention, Trespass, Rabbits, Deer, Dogs, Birds and Poisoned Grain, Sea Birds, Wild Birds, and Wild Fowl, and the Rating of Game throughout the United Kingdom. Systematically arranged, with the Acts, Decisions, Notes and Forms, &c. Third Edition. By J. W. WILLIS BUND, M.A., LL.B., of Lincoln's Inn, Esq., Barrister-at-Law; Vice-Chairman of the Severn Fishery Board, and Author of "The Law relating to Salmon Fisheries in England and Wales," &c. Post 8vo. 14s. cl.

"A book on the Game Laws, brought up to the present time, and including the recent acts with regard to wild fowl, &c., was much needed, and Mr. Willis Bund has most opportunely supplied the want by bringing out a revised and enlarged edition of the very useful handy book of which the late Mr. Oke was the author. The comprehensive nature of the work is shown by the voluminous title page, and the extent to which the book is expanded will be understood when we say that it contains about 150 pages more than the last edition."—*The Field*.

"The editorship of the present publication has, we are happy to say, fallen into such able hands as those of Mr. Willis Bund. In conclusion, we would observe that the present edition of the above work will be found by legal men or others who require any reliable information on any subject connected with the game laws, of the greatest practical utility, and that landed proprietors, farmers, and sportsmen will find 'Oke's Game Laws' an invaluable addition to their libraries, and an easy means of enlightening themselves on a subject which closely affects them."—*Land and Water*.

"Mr. Willis Bund has edited a third edition of 'Oke's Game Laws.' The changes in the law by statute and the reported cases to the end

of 1876 are duly noted. We think he sustains the reputation of the author."—*Law Times*.

"The task of bringing out a third edition has fallen upon Mr. Bund. Several important statutes bearing upon the subject have been passed since 1863, and many important decisions given by the Courts. With these the author has dealt in a careful and complete manner, and on the whole he seems to have succeeded in maintaining the just reputation of the work."—*Law Journal*.

"The present edition, which is really worthy of the reputation of the preceding ones, collects all the important decisions to the end of 1876, and includes a reading of all the recent statutes. All this matter is comprised in some 500 pages, and offered at a price that only the general demand for Mr. Oke's works could render remunerative. Possessed of the many valuable qualifications we have indicated, the third edition of 'Oke's Game Laws' may well be expected to achieve a success no less than was attained by its predecessors. No more its author could desire."—*Irish Law Times*.

"A new and revised edition of 'Oke's Handy Book of the Game Laws' makes its appearance in seasonable time. The lamented author having died since the last appearance of the work, this new

Mr. Oke's Magisterial Works—continued.

edition, which contains all the most recent statutes, and notices of cases of importance bearing on the subject, has been prepared under the editorship of Mr. Willis Bund."—*Daily News*.

"Mr. Bund's digest of the new laws passed since the death of Mr. Oke is admirable. The editor in the present instance deserves unqualified praise."—*Worcester Herald*.

"Under the competent care of Mr. Bund, Messrs. Butterworth have issued a third edition of Oke's excellent handy-book upon the Game Laws. Since the last edition was published such new measures as the Gun Licence Act, the Wild Birds Preservation Act, the Sea Birds Preservation Act, and others in the same direction, have been passed. Of these full cognisance

is taken in the new issue. Signally comprehensive and exact is the information supplied, and the volume is an indispensable companion not only to country gentlemen and magistrates, but to all dealers in game and every person possessing a gun."—*Sunday Times*.

"This is a new and revised edition of a most useful handy book, the laws affecting the subject matter being brought down to the present time. The work has been also materially enlarged, and special chapters written on Scotch and Irish Game Laws—Property in Game and other Wild Animals—Actions of Trespass at Common Law—The Poaching Prevention Act, and other kindred subjects, have been added."—*Bell's Messenger*.

Oke's Fishery Laws. Second Edition by Bund.

Just published, in 1 Vol. post 8vo., 5s. cloth.

A Handy Book of the Fishery Laws: containing the Law as to Fisheries, Private and Public, in the Inland Waters of England and Wales, and the Freshwater Fisheries Preservation Act, 1878. Systematically arranged: with the Acts, Decisions, Notes, and Forms, by GEORGE C. OKE. *Second Edition*, by J. W. WILLIS BUND, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law, Chairman of the Severn Fishery Board.

"This is a second edition of Mr. Oke's book on the Fishery Laws, edited by Mr. Willis Bund. It is a capital and, as it professes to be in its title, a handy book on fishery law: for, by simply turning to the index, the inquirer who may be perplexed upon any point of fishery law can find his case stated in a condensed and simple form which will probably tell him all he wishes

to know. Considering how very diffuse fishery law is, and the number of acts of parliament it now involves, the compressing of it into so small a space has been done wonderfully well."—*The Field*.

"This is an extremely useful little work, and one which should be read by every English and Welsh angler."—*Publishers' Circular*.

Oke's Law of Turnpike Roads; comprising the whole of the General Acts now in force, including those of 1861; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors; as to the interference by Railways with Roads, their Non-repair, and enforcing Contributions from Parishes, &c., practically arranged. With Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c. By GEORGE C. OKE. *Second Edition*. 12mo. 18s. cloth.

THE LAW EXAMINATION JOURNAL.

EDITED BY HERBERT NEWMAN MOZLEY, M.A.,
Fellow of King's College, Cambridge; and of Lincoln's Inn, Esq., Barrister-at-Law.

*Price 1s. each Number, by post 1s. 1d. Nos. 34 & 35 (double number), price 2s.,
by post 2s. 2d.*

* * *All back numbers, commencing with No. I., may be had.*

No. XL.—Trinity, 1879.

I. Settled Estates Act, 1877 (ss. 16—41). II. New Rules for the Honours Examination. III. Digest of Cases. IV. Review: Claude Plumptre on the Law of Simple Contracts. V. Final Examination, June, 1879: Questions and Answers. VI. Intermediate Examination, June, 1879: Questions and Answers. VII. Correspondence and Notices.

No. XXXIX.—Easter, 1879.

I. The Statute of Quia Emptores. II. The Settled Estates Act, 1877 (ss. 1—15). III. Rules of the Supreme Court, March, 1869. IV. Digest of Cases. V. Final Examination, April, 1879: Questions and Answers. VI. Intermediate Examination, April, 1879: Questions and Answers. VII. Correspondence and Notices.

No. XXXVIII.—Hilary, 1879.

I. Real Property Limitation Act, 1874. II. Statutes of 1878 (cc. 52 to 79). III. Rules of the Supreme Court, November, 1878. IV. Final Examination, January, 1879: Questions and Answers. V. Intermediate Examination, January, 1879: Questions and Answers. VI. Correspondence and Notices.

No. XXXVII.—Michaelmas, 1878.

I. Statutes of Past Sessions. II. Statutes of 1878 (Second Notice). III. Notices relating to the Intermediate Examinations to be held in 1879 and 1880. IV. Reviews of Books. V. Final Examination, November, 1878: Questions and Answers. VI. Intermediate Examination, Nov. 1878: Questions and Answers. VII. Correspondence and Notices.

No. XXXVI.—Trinity, 1878.

I. Statutes of 1878 (Chapters I. to XIX. inclusive). II. Statutes of Past Sessions, including (1) The Act for the Amendment of the Law of Real Property, and (2) The Satisfied Terms Act. III. Reviews of Books. IV. Final Examination, June, 1878: Questions and Answers. V. Intermediate Examination, June, 1878: Questions and Answers. VI. Correspondence and Notices.

Nos. XXXIV. and XXXV.—Hilary and Easter, 1878.

I. Statutes of 1877 (Second Notice—conclusion). II. Regulations for Examinations made under the Solicitors Act, 1877. III. Digest of Cases. IV. Intermediate Examination, November, 1877: Questions and Answers. V. Final Examination, January, 1878: Questions and Answers. VI. Intermediate Examination, January, 1878: Questions and Answers. VII. Final Examination, April, 1878: Questions and Answers. VIII. Intermediate Examination, April, 1878: Questions and Answers. IX. Correspondence, &c.

No. XXXIII.—Michaelmas, 1877.

I. Statutes of 1877 (First Notice). II. Digest of Cases. III. Intermediate Examination, June, 1877: Questions and Answers. IV. Final Examination, November, 1877: Questions and Answers. V. Notices of Intermediate Examinations for 1878. VI. Correspondence and Notices.

No. XXXII.—Trinity, 1877.

I. Satisfied Terms. II. Rules of the Supreme Court, May, 1877. III. Digest of Cases. IV. Intermediate Examination, April, 1877: Questions and Answers. V. Final Examination, June, 1877: Questions and Answers. VI. Reviews of Books. VII. Correspondence and Notices.

THE LAW EXAMINATION JOURNAL—continued.

No. XXXI.—Easter, 1877.

I. The Statutes of 1876 (Third Notice). II. Digest of Cases. III. Intermediate Examination, January, 1877: Questions and Answers. IV. Final Examination, April, 1877: Questions and Answers. V. Review: Roberts's Principles of Equity. VI. Correspondence and Notices.

No. XXX.—Hilary, 1877.

I. Statutes of 1876 (Second Notice). II. Rules of the Supreme Court, Dec. 1876. III. Digest of Cases. IV. Intermediate Examination, Nov. 1876: Questions and Answers. V. Final Examination, Jan. 1877: Questions and Answers. VI. Reviews. VII. Correspondence and Notices.

No. XXIX.—Michaelmas, 1876.

I. Statutes of 1876 (First Notice). II. Rules of the Supreme Court, June, 1876. III. Intermediate Examination, June, 1876: Questions and Answers. IV. Final Examination, November, 1876: Questions and Answers. V. Notices of the Intermediate Examinations for 1877. VI. Correspondence and Notices.

No. XXVIII.—Trinity, 1876.

I. The Rules of February, 1876. II. The Statutes of 1875, concluded. III. Digest of Cases. IV. Intermediate Examination, April, 1876: Questions and Answers. V. Final Examination, June, 1876: Questions and Answers. VI. Reviews. VII. Correspondence and Notices.

No. XXVII.—Easter, 1876.

I. Notices for the June and November Examinations, 1876. II. Further Extracts from the Rules of November 2, 1875. III. Statutes of 1875 (Third Notice). IV. Digest of Cases. V. Intermediate Examination, January, 1876: Questions and Answers. VI. Final Examination, April, 1876: Questions and Answers. VII. The New Law Dictionary. VIII. Reviews of Books. IX. Correspondence and Notices.

No. XXVI.—Hilary, 1876.

I. The New Rules relating to Examinations. II. The Statutes of 1875 (Second Notice). III. Digest of Cases. IV. Intermediate Examination, Michaelmas Sittings, 1875: Questions and Answers. V. Final Examination, Hilary Sittings, 1876: Questions and Answers. VI. Reviews. VII. Correspondence and Notices.

No. XXV.—Michaelmas, 1875.

I. Statute of Fraudulent Conveyances, 13 Eliz. c. 5. II. Statutes of 1875 (First Notice). III. Digest of Cases. IV. Intermediate Examination, Trinity Term, 1875: Questions and Answers. V. Final Examination, Michaelmas Term, 1875: Questions and Answers. VI. Reviews of Books. VII. Correspondence and Notices.

No. XXIV.—Trinity, 1875.

I. The Statute of Uses, continued. II. Digest of Cases. III. Intermediate Examination, Easter Term, 1875: Questions and Answers. IV. Final Examination, Trinity Term, 1875: Questions and Answers. V. A New Law Dictionary. VI. Correspondence and Notices.

* * * Copies of Vol. I. of the Law Examination Journal, containing Nos. I to 14, with full Index and Tables of Cases cited, may now be had, price 46s. bound in cloth.

Vol. II. of the same is also now ready, containing Nos. 15 to 28, with full Index in a cloth, 46s.

The Index to Vol. II. may be had separately to complete copies of Vols. I. & II. 6d. sewed.

THE BAR EXAMINATION JOURNAL.

THE BAR EXAMINATION JOURNAL, containing the Examination Papers on all the subjects, with Answers, set at the General Examination for Call to the Bar. Edited by A. D. TYSSSEN, B.C.L., M.A., Sir R. K. WILSON, Bart., M.A., and W. D. EDWARDS, LL.B., Barristers-at-Law. 3s. each, by post 3s. 1*d.* Nos. 3, 6, 9, 10, 11, 12, 13, 14, 15 and 16, Hil. 1872 to Hil. 1878, both inclusive, may now be had.

**No. 13 is a double number, price 6s., by post 6s. 2*d.* Nos. 1, 2, 4, 5, 7 and 8 are out of print.*

—◆—

**THE PRELIMINARY EXAMINATION JOURNAL,
And Students' Literary Magazine.**

Edited by JAMES ERLE BENHAM, formerly of King's College, London;
Author of "The Student's Examination Guide," &c.

Now Complete in Eighteen Numbers, containing all the Questions, with Answers, from 1871 to 1875, and to be had in 1 Vol. 8vo., price 18s. cloth.

Nos. I. to XVIII. may still be had, price 1s. each, by post 1s. 1*d.*

—◆—

BALL'S POPULAR CONVEYANCER.

THE POPULAR CONVEYANCER; being a Comprehensive, Theoretical and Practical Exposition of Conveyancing, with Concise Precedents. By JAMES BALL. 8vo. 10s. 6*d.* cloth.

CONTENTS:—Chap. I. Introduction.—II. Terms employed in Conveyances.—III. Agreements or Contracts for Sale or Purchase.—IV. General Contracts.—V. Conveyances on Sales.—VI. Leases.—VII. Mortgages.—VIII. Partnerships.—IX. Settlements.—X. Wills.—XI. Miscellaneous Deeds.—XII. Abstracts of Title.—XIII. Memorials.—XIV. Notices.—XV. Recitals.—XVI. Requisitions on Title.—XVII. On conducting and completing Conveyancing Matters. Appendix A. Charter of Feoffment.—B. 23 & 24 Viet. cap. 145 (with Notes).—C. Affidavits and Declarations.—D. Public Companies: Instruments required upon Incorporation.—Table of Cases Cited.—Table of Precedents.—General Index.

"The work shows that Mr. Ball has a very clear conception of conveyancing; his notes are well written and compendious, and the precedents have been selected with great care. Such a book must commend itself to students and practitioners." *Law Times*.

"Mr. Ball's main object is to place in the hands of clerks and students a guide to the simpler conveyancing matters

transacted in a solicitor's office. We think the book will be useful for this purpose, and the diligence with which the author has annotated his precedents will certainly save the solicitor or his conveyancing clerk, the trouble of imparting a good deal of elementary information to the articulated clerks."—*Solicitors' Journal*.

BAXTER'S JUDICATURE ACTS.—Third Edition.

JUDICATURE ACTS AND RULES, 1873—1879 ; containing all the Statutes, Rules, Forms, and Decisions to the present time. By WYNNE E. BAXTER, Solicitor, Under Sheriff of London and Middlesex. Post 8vo. 10s. cloth.



CUTLER'S CIVIL SERVICE OF INDIA.

ON REPORTING CASES for their PERIODICAL EXAMINATIONS by SELECTED CANDIDATES for the CIVIL SERVICE of INDIA. Being a Lecture delivered on Wednesday, June 12, 1867, at King's College, London. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister-at-Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London. 8vo. 1s. sewed.



BROWNING'S DIVORCE AND MATRIMONIAL PRACTICE.

THE PRACTICE and PROCEDURE of the COURT for DIVORCE AND MATRIMONIAL CAUSES, including the Acts, Rules, Orders, Copious Notes of Cases and Forms of Practical Proceedings, with Tables of Costs. By W. ERNST BROWNING, Esq., of the Inner Temple, Barrister-at-Law. Post 8vo. 8s. cloth.



PHILLIPS'S LAW OF LUNACY.

THE LAW CONCERNING LUNATICS, IDIOTS, and PERSONS OF UNSOUND MIND. By CHARLES P. PHILLIPS, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, and Commissioner in Lunacy. Post 8vo. 18s. cloth.

"Mr. Phillips has, in his very complete, elaborate and useful volume, presented us with an excellent view of the

present law, as well as the practice relating to lunacy."—*Law Magazine and Review*.

HOLLAND ON THE FORM OF THE LAW.

ESSAYS upon the FORM of the LAW. By THOMAS ERSKINE HOLLAND, M.A., Fellow of Exeter College, and Chichele Professor of International Law in the University of Oxford, and of Lincoln's Inn, Esq., Barrister-at-Law. 8vo. 7s. 6d. cloth.

"A work of great ability." *Athenæum*.
 "Entitled to very high commendation."—*Law Times*.

"The essays of an author so well qualified to write upon the subject."—*Law Journal*.

"We can confidently recommend these

essays to our readers."—*Law Magazine*.

"A work in which the whole matter is easily intelligible to the lay as well as the professional public."—*Saturday Review*.

"Mr. Holland's extremely valuable and ingenious essays."—*Spectator*.

WRIGHT ON THE LAW OF CONSPIRACY.

THE LAW OF CRIMINAL CONSPIRACIES AND AGREEMENTS. By R. S. WRIGHT, of the Inner Temple, Barrister-at-Law, Fellow of Oriel Coll., Oxford. 8vo. 4s. cloth.

"It is with great pleasure that we notice this short but very able and thorough work. It shows not merely unsparring and well directed research, but a power of discrimination and analysis of which it is rarely our good fortune to meet with, and its matter is conveyed in language equally remote from the dry and withered style of the

ordinary text-book, and from the oracular diction in which too many of the modern school of jurisprudence enshrine their fine ideas."—*Solicitors' Journal*.

"Looking at this work from a purely legal point of view, we have no hesitation in according it very high praise."—*Spectator*.

CHITTY, Jun., PRECEDENTS IN PLEADING.—Third Edition.

CHITTY, JUN., PRECEDENTS in PLEADING; with copious Notes on Practice, Pleading and Evidence, by the late JOSEPH CHITTY, Jun., Esq. Third Edition. By the late THOMPSON CHITTY, Esq., and by LEOFRIC TEMPLE, R. G. WILLIAMS, and CHARLES JEFFERY, Esqrs., Barristers-at-Law. Complete in 1 vol. royal 8vo. 38s. cloth.

LOVESY'S LAW OF MASTERS AND WORKMEN.

The LAW of ARBITRATION between MASTERS and WORKMEN, as founded upon the Councils of Conciliation Act of 1867 (30 & 31 Vict. c. 105), the Master and Workmen Act (5 Geo. 4, c. 96), and other Acts, with an Introduction and Notes. By C. W. LOVESY, Esq., of the Middle Temple, Barrister-at-Law. 12mo. 4s. cloth.

The Doctrine of Continuous Voyages as applied to CONTRABAND of WAR and BLOCKADE, contrasted with the DECLARATION of PARIS of 1856. By SIR TRAVELERS TWISS, Q.C., D.C.L., &c., &c., President of the Bremen Conference, 1876. Read before the Association for the Reform and Codification of the Law of Nations at the Antwerp Conference, 1877. Svo. 2s. 6d. sewed.

Mr. Justice Lush's Common Law Practice. By DIXON. Third Edition. LUSH'S PRACTICE of the SUPERIOR COURTS of COMMON LAW at WESTMINSTER, in Actions and Proceedings over which they have a common Jurisdiction; with Introductory Treatises respecting Parties to Actions; Attornies and Town Agents, their Qualifications, Rights, Duties, Privileges and Disabilities; the Mode of Suing, whether in Person or by Attorney, in Forma Pauperis, &c. &c. &c.; and an Appendix, containing the authorized Tables of Costs and Fees, Forms of Proceedings and Writs of Execution. Third Edition. By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister-at-Law. 2 vols. Svo. 46s. cloth.

Supreme Appellate Jurisdiction. A Speech delivered in the House of Lords on the 11th June, 1874. By the Right Hon. Lord O'HAGAN. Svo. 1s. sewed.

The Law and Facts of the Alabama Case with Reference to the Geneva Arbitration. By JAMES O'DOWD, Esq., Barrister-at-Law. Svo. 2s. sewed.

A Letter to the Right Hon. the Lord High Chancellor concerning Digests and Codes. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister-at-Law. Royal Svo. 1s. sewed.

Gray's Treatise on the Law of Costs in Actions and other PROCEEDINGS in the Courts of Common Law at Westminster. By JOHN GRAY, Esq., of the Middle Temple, Barrister-at-Law. Svo. 21s. cloth.

Rules and Regulations to be observed in all Causes, SUITS and PROCEEDINGS instituted in the Consistory Court of London from and after the 26th June, 1877. By Order of the Judge. Royal Svo. 1s. sewed.

Pulling's Practical Compendium of the Law and Usage of MERCANTILE ACCOUNTS; describing the various Rules of Law affecting them, the ordinary mode in which they are entered in Account Books, and the various Forms of Proceeding, and Rules of Pleading, and Evidence for their Investigation at Common Law, in Equity, Bankruptcy and Insolvency, or by Arbitration. With a SUPPLEMENT, containing the Law of Joint Stock Companies' Accounts, under the Winding-up Acts of 1848 and 1849. By ALEXANDER PULLING, Esq., of the Inner Temple, Barrister-at-Law. 12mo. 9s. boards.

Foreshore Rights. Report of Case of Williams v. Nicholson for removing Shingle from the Foreshore at Withernsea. Heard 31st May, 1870, at Hull. 8vo. 1s. sewed.

Hamel's International Law.—International Law in connexion with Municipal Statutes relating to the Commerce, Rights and Liabilities of the Subjects of Neutral States pending Foreign War; considered with reference to the Case of the "Alexandra," seized under the provisions of the Foreign Enlistment Act. By FELIX HARGRAVE HAMEL, of the Inner Temple, Barrister-at-Law. Post 8vo. 3s. sewed.

Keyser on the Law relating to Transactions on the STOCK EXCHANGE. By HENRY KEYSER, Esq., of the Middle Temple, Barrister-at-Law. 12mo. 8s. cloth.

The Inns of Court and Legal Education pending Legislation Reviewed, with Suggestions for the proper Foundation of a Law University. A Paper read at the Provincial Meeting of the Incorporated Law Society of the United Kingdom, held at Liverpool, 14th October, 1875. By C. T. SAUNDERS, a Member of the Council. 8vo. 1s. sewed.

A Memoir of Lord Lyndhurst. By William Sidney GIBSON, Esq., M.A., F.S.A., Barrister-at-Law, of Lincoln's Inn. Second Edition, enlarged. 8vo. 2s. 6d. cloth.

A Memoir of Mr. Justice Talfourd. By a Member of the Oxford Circuit. Reprinted from the Law Magazine. 8vo. 1s. sewed.

Remarks on Law Reform. By George W. M. Dale, of Lincoln's Inn, Esq. 8vo. 1s. 6d. sewed.

Blayney's Practical Treatise on Life Assurance. Second Edition. By FREDERIC BLAYNEY, Esq. 12mo. 7s. boards.

The Laws of Barbados. (By Authority.) Royal 8vo. 21s. cl.

Pearce's History of the Inns of Court and Chancery; with Notices of their Ancient Discipline, Rules, Orders and Customs, Readings, Moots, Masques, Revels and Entertainments, including an account of the Eminent Men of the Four Learned and Honourable Societies—Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn, &c. By ROBERT R. PEARCE, Esq., Barrister-at-Law. 8vo. 8s. cloth.

Baker's Practical Compendium of the Recent Statutes, CASES, and DECISIONS affecting the OFFICE of CORONER, with Precedents of Inquisitions, and Practical Forms. By WILLIAM BAKER, Esq., one of the Coroners for Middlesex. 12mo. 7s. cloth.

A Practical Treatise on the Law of Advowsons. By J. MIREHOUSE, Esq., Barrister-at-Law. 8vo. 14s. boards.

Field's Law relating to Curates. The Law relating to PROTESTANT CURATES and the RESIDENCE of INCUMBENTS or their BENEFICES in ENGLAND and IRELAND. By C. D. FIELD, M.A., LL.D., of H. M.'s Bengal Civil Service; Author of the Law of Evidence in India, &c. Post 8vo. 6s. cloth.

Williams' Introduction to the Principles and Practice of Pleading in the Superior Courts of Law, embracing an Outline of the whole Proceedings in an Action at Law, on Motion and at Judges' Chambers; together with the Rules of Pleading and Practice, and Forms of all the principal Proceedings. By WYKIN WILLIAMS, M.P., of the Inner Temple, Esq., Barrister-at-Law. 8vo. 12s. cloth.

The Lord's Table: its true Rubrical Position. The Purchas Judgment not reliable. The Power of the Laity and Churchwardens to prevent Romanizing. Suggestions to the Laity and Parishes for the due ordering of the Table at Communion Time. The Rubrical Position of the Celebrant. By H. F. NAPPER, Solicitor. 8vo. 1s. sewed.

Greening's Forms of Declarations, Pleadings and other PROCEEDINGS in the Superior Courts of Common Law, with the Common Law Procedure Act, and other Statutes; Table of Officers' Fees; and the New Rules of Practice and Pleading, with Notes. By HENRY GREENING, Esq., Special Pleader. Second Edition. 12mo. 10s. 6d. boards.

Browne's Practical Treatise on Actions at Law, embracing the Subjects of Notice of Action; Limitation of Actions; necessary Parties to and proper Forms of Actions, the Consequence of Mistake therein; and the Law of Costs with reference to Damages. By ROWLAND JAY BROWNE, Esq., of Lincoln's Inn, Special Pleader. 8vo. 16s. boards.

Deane's Law of Blockade, as contained in the Judgments of Dr. Lushington and the Cases on Blockade decided during 1851. By J. P. DEANE, D.C.L., Advocate in Doctors' Commons. 8vo. 10s. cl.

Linklater's Digest of and Index to the New Bankruptcy ACT, and the accompanying Acts of 1869. By JOHN LINKLATER, Solicitor. Second Edition. Imperial 8vo. 3s. 6d. sewed.

Pothier's Treatise on the Contract of Partnership. Translated from the French, with Notes, by O. D. TUDOR, Esq. Barrister-at-Law. 8vo. 5s. cloth.

Norman's Treatise on the Law and Practice relating to LETTERS PATENT for INVENTIONS. By JOHN PANTON NORMAN, M.A., of the Inner Temple, Barrister-at-Law. Post 8vo. 7s. 6d. cloth.

Francillon's Law Lectures. Second Series. Lectures, ELEMENTARY and FAMILIAR, on ENGLISH LAW. By JAMES FRANCILLON, Esq., County Court Judge. First and Second Series. 8vo. 8s. each, cloth.

Gurney's System of Short Hand, as used by both Houses of Parliament. Seventeenth Edition, revised and improved. 12mo. 3s. 6d. cloth.

"Gurney's is, we believe, admitted to be the best of the many systems."—*Law Times*.

Gaches' Town Councillors and Burgesses Manual. **THE TOWN COUNCILLORS AND BURGESSES MANUAL:** a popular Digest of Municipal and Sanitary Law, with information as to Charters of Incorporation, and a useful Collection of Forms, especially adapted for newly incorporated Boroughs. By **LOUIS GACHES, LL.M., B.A.,** of the Inner Temple, Esq., Barrister-at-Law. Post 8vo. 7s. cloth.

Hunter's Suit in Equity: An Elementary View of the Proceedings in a Suit in Equity. With an Appendix of Forms. By **S. J. HUNTER, B.A.,** of Lincoln's Inn, Barrister-at-Law. Sixth Edition, by **G. W. LAWRENCE, M.A.,** Barrister-at-Law. Post 8vo. 12s. cloth.

Kerr's Action at Law: being an Outline of the Jurisdiction of the Superior Courts of Common Law, with an Elementary View of the Proceedings in Actions therein. By **ROBERT MALCOLM KERR, LL.D.,** Barrister-at-Law, now Judge of the Sheriff's Court of the City of London. The Third Edition. 12mo. 9s. cloth.

Parkinson's Handy-Book for the Common Law Judges' CHAMBERS. By **GEO. H. PARKINSON,** Chamber Clerk to the Hon. Mr. Justice Byles. 12mo. 7s. cloth.

A Treatise on the Law of Sheriff, with Practical Forms and Precedents. By **RICHARD CLARKE SEWELL, Esq., D.C.L.,** Barrister-at-Law, Fellow of Magdalen College, Oxford. 8vo. 17. 1s.

Drainage of Land: How to procure Outfalls by New Drains, or the Improvement of Existing Drains, in the Lands of an Adjoining Owner, under the powers contained in Part III. of the Act 24 & 25 Vict. c. 133, 1861; with Explanations of the Provisions, and Suggestions for the Guidance of Landowners, Occupiers, Land Agents and Surveyors. By **J. WM. WILSON,** Solicitor.

Fearne's Chart, Historical and Legigraphical, of Landed Property in England, from the time of the Saxons to the present Era, displaying at one view the Tenures, Modes of Descent and Power of Alienation of Lands in England at all times during that Period. On a sheet, coloured, 6s.; on a roller, 8s.

Speech of Sir R. Palmer, Q.C., M.P., at the Annual Meeting of the Legal Education Association, in the Middle Temple Hall, 1871, with a Report of the Proceedings. 8vo. 1s. sewed.

Law Students. Full Report of the Proceedings of the First General Congress of Law Students' Societies. Held at Birmingham, 21st and 22nd May, 1872. 8vo. 2s. sewed.

Legal Education: By W. A. JEVONS. A Paper read at the Social Science Congress at Leeds, 1871. 8vo. 6d. sewed.

The Ancient Land Settlement of England. A Lecture delivered at University College, London, October 17th, 1871. By **J. W. WILLIS BOND, M.A.,** Professor of Constitutional Law and History. 8vo. 1s. sewed.

Ecclesiastical Law.

The Case of the Rev. G. C. Gorham against the Bishop of Exeter, as heard and determined by the Judicial Committee of the Privy Council on appeal from the Archdeacon of Canterbury. By EDWARD F. MOORE, M.A., Barrister-at-Law, Author of Moore's Privy Council Reports. Royal 8vo. 8s. cloth.

Coote's Practice of the Ecclesiastical Courts, with Forms and Tables of Costs. By HENRY CHARLES COOTE, Proctor in Doctors' Commons, &c. One thick vol. 8vo. 28s. boards.

Burder v. Heath. Judgment delivered on November 2, 1861, by the Right Honorable STEPHEN LUSHINGTON, D.C.L., Dean of the Arches. Folio. 1s. sewed.

The Law relating to Ritualism in the United Church of England and Ireland. By F. H. HAMEL, Esq., Barrister-at-Law. 12mo. 1s. sewed.

Archdeacon Hale's Essay on the Union between Church and STATE, and the Establishment by Law of the Protestant Reformed Religion in England, Ireland and Scotland. By W. H. HALE, M.A., Archdeacon of London. 8vo. 1s. sewed.

Judgment of the Privy Council in the Case of Hebbert v. Purchas. Edited by EDWARD BULLOCK, of the Inner Temple, Barrister-at-Law. Royal 8vo. 2s. 6d.

Judgment delivered by Right Hon. Lord Cairns on behalf of the Judicial Committee of the Privy Council in the Case of Martin v. Mackenochie. Edited by W. ERNST BROWNING, Esq., Barrister-at-Law. Royal 8vo. 1s. 6d. sewed.

Judgment of the Right Hon. Sir Robert J. Phillimore, Official Principal of the Court of Arches, with Cases of Martin v. Mackenochie and Flamank v. Simpson. Edited by WALTER G. F. PHILLIMORE, B.A., of the Middle Temple, &c. Second Edition, royal 8vo. 2s. 6d. sewed.

The Judgment of the Dean of the Arches, also the Judgment of the PRIVY COUNCIL, in Liddell (clerk) and Horne and others against Westerton, and Liddell (clerk) and Park and Evans against Beal. Edited by A. P. BAYFORD, LL.D. Royal 8vo. 3s. 6d. sewed.

The Case of Long v. Bishop of Cape Town, embracing the opinions of the Judges of Colonial Court hitherto unpublished, together with the decision of the Privy Council, and Preliminary Observations by the Editor. Royal 8vo. 6s. sewed.

The Law of the Building of Churches, Parsonages and Schools, and of the Division of Parishes and Places—continued to 1874. By CHARLES FRANCIS TROWER, M.A., Barrister-at-Law. Post 8vo. 9s. cloth.

The History and Law of Church Seats or Pews. By A. HEALES, F.S.A., Proctor in Doctors' Commons. 2 vols. 8vo. 16s. cl.

PREPARING FOR PUBLICATION.

Phillimore's International Law. Third Edition. Vol. I.
In Svo.

Dr. Tristram's Practice of the Probate Division of the
High Court of Justice in Contentious Matters. Seventh Edition. In 1 vol. Svo.

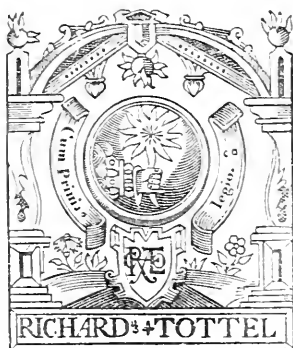
Saunders' Summary Jurisdiction Act: arranged as a Supplement to Oke's Synopsis. In 1 vol. Svo.

Glen's Law of Highways. The Third Edition. In Svo.

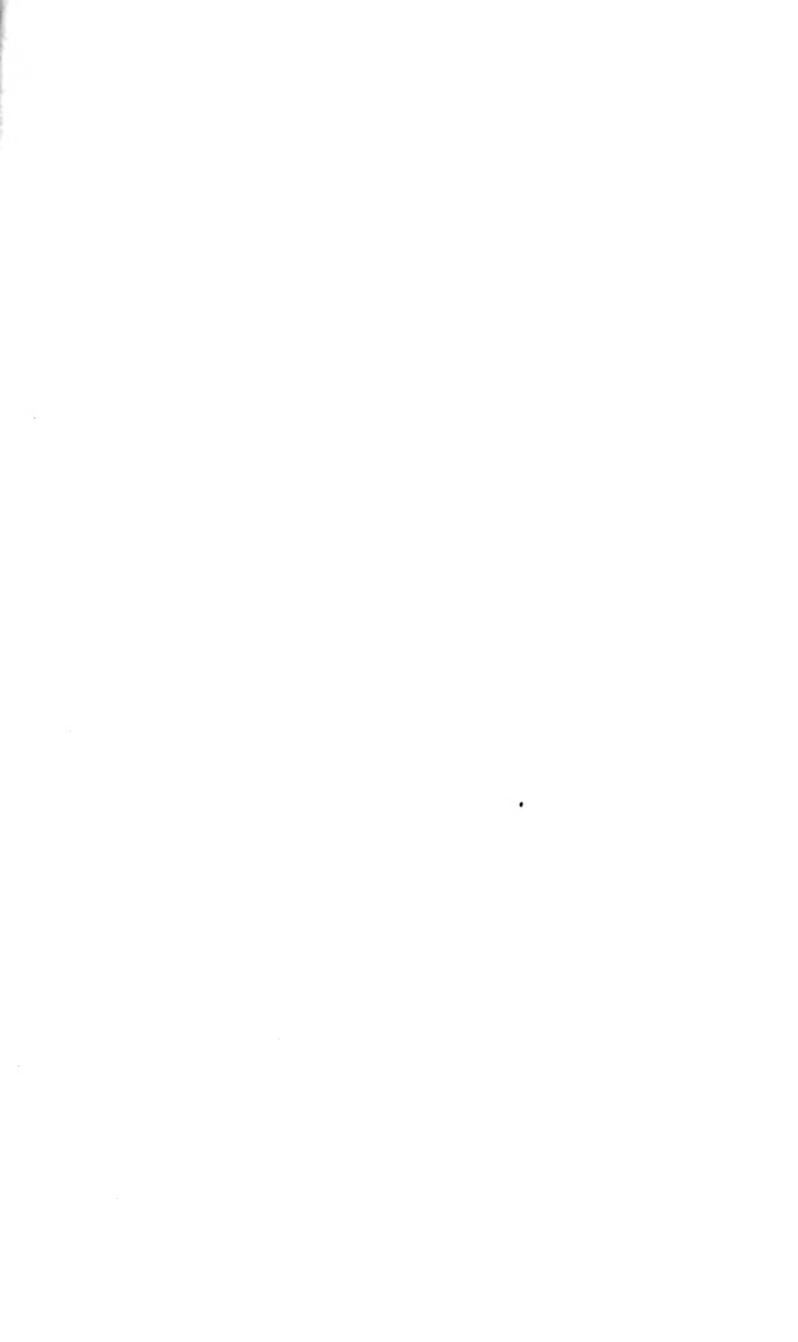
A Collection of Mortgage Precedents and Decrees; intended as a Companion Work to the General Law of Mortgage. By W. R. FISHER, Esq., of Lincoln's Inn, Barrister-at-Law. In 1 vol. royal Svo.

Law Examination Journal, No. 41, Michaelmas, 1879.

Imprinted at London,
number Seuen in Flete strete within Temple barre,
whylom the signe of the Hande and starre,
and the Hovse where liued Richard Tottel,
printer by Special patentes of the booke of the Common lawe
in the seuerall reigns of
King Edw. VI. and of the queenes Marye and Elizabeth.



1553—1879.



LAW WORKS FOR STUDENTS.

In 8vo., 3s., by post 3s. 1d. Nos. 3, 6, 7 and 9 to 16, both inclusive, may still be had.

The Bar Examination Journal. Edited by A. D. Tyssen and W. D. EDWARDS, Esqrs., Barristers-at-Law.

CONTENTS OF EACH NUMBER.—Lists of Subjects and the Papers in both the General Examination for all Students, and also in Indian Law for Indian Students, *with the Answers*; Notices as to the Examinations, &c.

In 8vo., 1s., by post, 1s. 1d. Nos. 1 to 38 may still be had.

The Law Examination Journal and Law Student's Magazine. Edited by H. N. MOZLEY, Esq., Barrister-at-Law.

CONTENTS OF EACH NUMBER.—Leading Articles by the Editor; Reviews of Books; Summary of new Decisions in Banco and at Nisi Prius; Analysis of the more important practical Statutes of the Session; Intermediate Examination Questions and Answers; Final Examination Questions and Answers; Notes on the Examinations; Correspondence.

The Preliminary Examination Journal and Students' Literary Magazine. Edited by JAMES ERLE BENHAM, formerly of King's College, London. Now complete, in 18 numbers, and giving all the Questions and Answers from February, 1871, to May, 1875, both inclusive, bound in cloth, price 18s. The numbers may still be had separately, price 1s. each, by post 1s. 1d.

Shaw's Inns of Court Kalendar for 1878. 8vo. 8s. cloth.

Mozley and Whiteley's Concise Law Dictionary. 8vo. 20s. cloth.

"Law students desirous of cramming will find it acceptable."—*Law Times*.

Mr. Serjeant Stephen's Commentaries on the Laws of England. Eighth Edition. By JAMES STEPHEN, Esq., LL.D., Judge of County Courts, &c. 4 vols. 8vo. cloth. [*In the Press.*]

Goldsmith's Doctrine and Practice of Equity. Sixth Edition. 8vo. 18s. cloth.

"A well-known students' book; the best, because the most complete, yet simplified, instructor ever provided for him."—*Law Times*.

Tudor's Selection of Leading Cases on Real Property, Conveyancing, Wills and Deeds. 3rd Edit. Roy. 8vo. [*In the Press.*]

Kelly's Conveyancing Draftsman. Post 8vo. 6s. cloth.

"A very useful little book for conveyancing practitioners, *i.e.* for solicitors and students."—*Law Magazine*.

Underhill's Law of Torts or Wrongs. Second Edition. Post 8vo. 8s. cloth.

"He has set forth the elements of the law with clearness and accuracy."—*Law Times*.

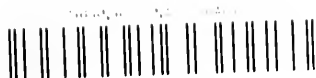
Underhill's Law of Trusts and Trustees. Post 8vo. 8s. cl.

Fulton's Manual of Constitutional History. Post 8vo. 7s. 6d. cloth.

"We may fairly say the book is well done."—*The Law*.

Chute's Relation of Equity to Common Law. Post 8vo. 9s. cloth.

Trower's Manual of the Prevalence of Equity under Section 25 of the Judicature Act, 1873, amended by the Judicature Act, 1875. By CHARLES FRANCIS TROWER, Esq., M.A., Barrister at Law. In 8vo. 5s. cloth.



AA 000 836 028

LAW WORKS FOR STUDENTS.

Mosely's Articled Clerks' Handy Book, with Directions as to course of Study and other useful Information. 2nd Edition, by B. B. B. B. Post Svo. 8s. 6d. cloth.

Roberts' Principles of the Court of Equity: a First Book on Equity Jurisprudence. Third Edition. Svo. 18s. cloth.

"To the student class of our readers we cordially recommend it." *Law Journal*.

Ball's Popular Conveyancer; with Forms. Svo. 10s. 6d. cloth.

Drewry's Forms of Claims and Defences in the Chancery Division of the High Court of Justice. Post Svo. 7s. 6d. cloth.

"On the whole we can thoroughly recommend it to our readers." *Law Journal*.

Bedford's Final Examination Guide to the Practice of the Supreme Court of Judicature. Questions and Answers. Svo. 7s. 6d. cloth.

Bedford's Final Guide to the Law of Probate and Divorce. Questions and Answers. Svo. 4s. cloth.

Bedford's Table of Leading Statutes for the Intermediate and Final Examination in Law, Equity and Conveyancing. Issued on a sheet.

Seaborne's Law of Vendors and Purchasers of Real Property. 2nd Edition. Post Svo. 7s. 6d. cloth.

"The student will find this book a useful introduction to a dry and difficult subject." *Law Journal*.

Lewis's Principles of Conveyancing Explained and Illustrated by Concise Precedents. Svo. 18s. cloth.

"Mr. Lewis has compiled a valuable addition to the Law Student's library." *Law Journal*.

Lewis's Principles of Equity Drafting; with an Appendix of Forms. Post Svo. 12s. cloth.

Barry's Treatise on the Practice of Conveyancing. Svo. 18s. cloth.

"The treatise is the production of a person of great merit." *Law Journal*.

Powell's Principles and Practice of the Law of Evidence. Fourth Edition. By J. C. Powell, B.A., and E. J. G. G. G. B.A., Barristers-at-Law. In Svo. 18s. cloth.

Pearce's History of the Inns of Court. Svo. 8s. cloth.

Cutler and Griffin's Analysis of the Indian Penal Code. Svo. 6s. cloth.

Cutler on Reporting Cases for the Examinations by Selected Candidates for the Civil Service of India. Svo. 7s. 6d. cloth.

M. Ortolan's History of the Roman Law, translated into English with the Author's preface and Supplement by a Chronometrical Chart of Roman History, by F. T. P. P. and D. N. N. Esqrs., Barristers-at-Law. Svo. 28s. cloth.

Nasmith's Institutes of English Public Law. Post Svo. 12s. cloth.

Nasmith's Institutes of English Private Law. 2 vols. Post Svo. 21s. cloth.

